



**COUNCIL  
OF  
CONTRACTING AGENCIES  
AND  
NEW YORK STATE PROCUREMENT  
COUNCIL  
GUIDELINES  
FOR  
INSURANCE REQUIREMENTS  
IN CONTRACTS**

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The Council of Contracting Agencies is comprised of the following agencies and public authorities:

NYS Office of General Services

NYS Department of Environmental Conservation

NYS Office of Parks, Recreation and Historic Preservation

NYS Department of Transportation

NYS Department of Labor

SUNY

SUNY Construction Fund

NYS Division of Budget

Dormitory Authority of the State of New York

Hudson River Park Trust

NYS Insurance Fund

NYS Thruway Authority

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If you have questions about these guidelines or suggestions on how to improve these guidelines, please contact the Council of Contracting Agencies’ Insurance Subcommittee at [CCA.Insurance.Manual@OGS.NY.gov](mailto:CCA.Insurance.Manual@OGS.NY.gov). If you require assistance with determining the appropriate insurance types and/or limits for a contract, please contact your Agency’s/Authority’s Insurance Analyst.

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## V. EXHIBITS

### A. Certificate of Insurance Forms –

1. Exhibit A.1. – Sample ACORD Certificates of Liability Insurance (ACORD 25 (2016/03)) With Pollution and Without Pollution
2. Exhibit A.2. – Sample Construction Certificate of Liability Insurance Addendum (ACORD 855 NY) and Guidance on How to Review the Form
3. Exhibit A.3 – Sample ACORD Certificate of Property Insurance (ACORD 27 (2016/03))
4. Exhibit A.4 - Sample ACORD Certificate of Commercial Property Insurance (ACORD 28 (2016/03))
5. List of Acceptable Workers’ Compensation and Disability Benefits Insurance Forms
6. Exhibit A.5-A.8. – NYS Workers’ Compensation and Disability Benefits Insurance Forms
7. Exhibit A.9. – ELANY Affidavit

### B. Guidelines for Submitting Evidence of Insurance to “AGENCY”

1. Exhibit B.1. – Guidelines for Submitting Evidence of Insurance
2. Exhibit B.2. – Sample Letter

### C. “AGENCY” Procedures for Tracking and Approval and “AGENCY” Insurance Approval Form

1. Exhibit C. 1. – Procedure for Tracking and Approving Certificates of Insurance
2. Exhibit C. 2. – Insurance Approval Form

### D. Use of Unmanned Aircraft Systems Procedure

### E. Reference Materials

- Information on New York State Workers’ Compensation Law Requirements:
  - <http://www.wcb.ny.gov/content/main/Employers/requirements-businesses-applying-government-permits-licenses-contracts.pdf>
- Insurance Services Office (ISO) Forms:
  1. **CG 00 01 01 96** Commercial General Liability Coverage Form

2. **CG 20 10 11 85** Additional Insured – Owners, Lessees or Contractors – (Form B)
3. **CG 22 79 04 13** Exclusion – Contractors – Professional Liability Insurance
4. **CG 22 80 04 13** Limited Exclusion – Contractors Professional Liability Insurance
5. **CG 25 03 05 09** Designated Construction Project(s) General Aggregate Limit
6. **CA 01 12 01 21** New York Changes in Business Auto and Motor Carrier Coverage Forms
7. **CG 00 14 04 13** Special Protective and Highway Liability Policy- New York Department of Transportation
8. **CG 00 09 04 13** Owners and Contractors Protective Liability Coverage Form-Coverage for Operations of Designated Contractor
9. **CG 02 24 10 93** Earlier Notice of Cancellation Provided by US (For Use with CGL, Liquor, Pollution and Products Policies)
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15. **CP 10 30 09 17** Causes of Loss-Special Form
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## I. FOREWORD

The Council was created within the New York State Executive Department by Executive Order Number 125 on May 22, 1989 to ensure the systematic collection and timely exchange of information relevant to Agency<sup>1</sup> determinations of the responsibility and reliability of bidders, contractors,<sup>2</sup> and proposed subcontractors. On June 24, 2004, the Council of Contracting Agencies established the Insurance Subcommittee for the purposes of establishing general Insurance standards and practices among participating Council members.

## II. MISSION STATEMENT

The Council prepared these guidelines to serve as a reference tool. They are designed to advise personnel who prepare or negotiate contracts, leases, permits and other agreements, or who are responsible for administering those agreements, including individuals responsible for reviewing Insurance documentation. These guidelines offer information on how to structure contract Insurance provisions, and how to monitor Contractor compliance with those requirements.

**The goal of these guidelines is to provide a standard for consistent Insurance-related language and requirements for use in contract documents.** While the standards referenced in these guidelines have been developed via a collaborative effort involving participating Council members and Insurance industry representatives, and the Council believes these standards best meet the needs of the State given the current contract and Insurance industry environments, the Council also recognizes that governmental entities have their own unique operations and contracting needs. Therefore, it is understood that each Agency may find a need to deviate from the standards presented here as it deems necessary.

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<sup>1</sup> The term “Agency,” as used in these guidelines shall refer to the office, board, department, commission, authority, fund, or public benefit corporation executing the contract.

<sup>2</sup> The term “Contractor” as used in these guidelines shall refer to any third party entering into a contract with the Agency. As such, the term may encompass Contractors, consultants, licensees, grantees, permittees, lessees, tenants and/or others as applicable to the Agency’s operations.

### III. GLOSSARY OF INSURANCE TERMS

**This Glossary of Insurance terms is intended as a reference for those Agency personnel who have reason to work with Insurance industry personnel and/or documents as part of their work for the Agency. The terms described in the glossary are not limited to those used in other parts of these guidelines but are a compilation of terms frequently encountered in discussions of Insurance coverage and documentation.**

**ACCIDENT:** An unexpected incident resulting in Personal Injury or property damage.

**ACTUAL CASH VALUE:** Usually the cost of replacing or restoring property to its condition immediately preceding a loss, less depreciation.

**ADDITIONAL INSURED:** A person or organization not automatically included as an Insured under an Insurance policy, but for whom Insured status is arranged usually by Endorsement at the request of the policyholder. If an individual or entity is an Additional Insured on a Contractor's policy, it can make a Claim to the Contractor's Insurance to pay for damages and legal fees, rather than relying on its own Insurance. Coverage for the Additional Insured might be limited to a single event or it could last for the lifetime of the policy. A Named Insured's impetus for providing Additional Insured status to others may be a desire to protect the other party because of a close relationship with that party (e.g., employees or members of an Insured club) or to comply with a contractual agreement requiring the Named Insured to do so (e.g., customers or owners of property leased by the Named Insured).

**ADDITIONAL NAMED INSURED:** A person or organization, other than the first Named Insured, identified as an Insured in the policy declarations or an addendum to the policy declarations or a person or organization added to a policy after the policy is written with the status of Named Insured. This entity would have the same rights and responsibilities as an entity named as an Insured in the policy declarations (other than those rights and responsibilities reserved to the first Named Insured). In this sense, the term can be contrasted with Additional Insured, a person or organization added to a policy as an Insured but not as a Named Insured. The term has not acquired a uniformly agreed upon meaning within the Insurance industry and use of the term in the two different senses defined above often produces confusion in requests for Additional Insured status between contracting parties. For purposes of Workers' Compensation and Disability Benefits, an Additional Named Insured is a separate business entity, added to a policy that shares common majority ownership with the primary Insured.

**AGGREGATE LIMIT:** A limit in an Insurance policy indicating the most that the Insurer will pay for all covered losses sustained during a specified period of time (usually a year), regardless of the number of Claims. Aggregate Limits are generally included in liability policies.

**ADJUSTERS:** Usually those who represent the Insurer in settling Claims with Insureds or with third-party claimants (sometimes a representative of the Insured).

**ADVERTISING INJURY:** A Commercial General Liability coverage, combined in standard Commercial General Liability Insurance (CGL) policies with Personal Injury coverage, that

insures the following offenses in connection with the Insured's advertising of its goods or services: libel, slander, invasion of privacy, copyright infringement, and misappropriation of advertising ideas.

**AGENT:** A person or organization who/that is authorized to act on behalf of another. An Insurance agent is a person or organization who/that solicits, negotiates, or instigates Insurance contracts on behalf of an Insurer and can be independent or an employee of the Insurer. Insurance agents are the legal representatives of Insurers, rather than policyholders, with the right to perform certain acts on behalf of the Insurers they represent, such as to bind coverage.

**AVIATION LIABILITY INSURANCE:** Insurance coverage geared specifically to the operation of aircraft and the risks involved in aviation. Aviation Insurance policies are distinctly different from those for other areas of transportation and tend to incorporate aviation terminology, as well as terminology, limits and clauses specific to Aviation Liability Insurance.

**BINDER:** A legal agreement issued either by an Agent or a company to provide temporary Insurance until a policy can be written. It should clearly designate the company in which the risk is bound as well as the amount, the perils insured against, and the type of Insurance.

**BLANKET ADDITIONAL INSURED:** An Endorsement that may be attached to liability Insurance policies that automatically grants Insured status to a person or organization that the Named Insured is required by contract to add as an Insured. May apply only to specific types of contracts or entities. Also referred to as an "automatic Additional Insured Endorsement."

**BOND:** A three-party contract in which one party, the surety, guarantees the performance or honesty of a second party, the principal (obligor), to the third party (obligee) to whom the performance or debt is owed.

**BROKER:** An Insurance intermediary who/that represents the Insured rather than the Insurer. Since they are not the legal representatives of Insurers, Brokers, unlike independent Agents, often do not have the right to act on behalf of Insurers, such as to bind coverage. While some brokers do have agency contracts with some Insurers, they usually remain obligated to represent the interests of Insureds rather than Insurers.

**BUILDER'S RISK INSURANCE:** A Commercial Property Insurance policy that is designed to cover property in the course of construction. There is no single standard Builder's Risk form; most Builder's Risk policies are written on inland marine (rather than Commercial Property) forms. Coverage is usually written on an all risk basis, and typically applies not only to property at the construction site, but also to property at off-site storage locations and in transit. Builder's Risk Insurance can be written on either a completed value or a reporting form basis; in either case, the estimated completed value of the project is used as the limit of Insurance.

**BUSINESS OWNER POLICY (BOP):** A policy that combines protection for all major property and liability risks in one package. This type of policy assembles the basic coverages required by a business owner in one bundle. It is usually sold at a premium that is less than the total cost of the individual coverages. BOPs are usually targeted at small and medium-sized businesses. They



typically contain business interruption Insurance, which provides reimbursement for business income resulting from an insured loss.

**CAPTIVE:** Captive Insurance companies are Insurance companies established with the specific objective of financing risks emanating from their parent group or groups, but they sometimes also insure risks of the group's customers as well. Using a Captive insurer is a risk management technique by which a business forms its own Insurance company subsidiary to finance its retained losses in a formal structure. Captives cannot be created by NYS governmental entities, unless specifically authorized under State law.

**CERTIFICATE OF INSURANCE:** A statement that a specified Insured and risk are covered to a specified extent, but ordinarily without responsibility on the part of the Insurer to notify the certificate holder of termination of the Insurance.

**CLAIM:** A demand by an individual or corporation to recover, under a policy of Insurance, for loss, which may come within that policy.

**CLAIMS-MADE POLICY:** A policy which covers all Claims reported to an Insurer within the policy period irrespective of when they occurred. Contrast with Occurrence Policy.

**COMMERCIAL GENERAL LIABILITY INSURANCE:** A standard Insurance policy issued to business organizations to protect them against liability Claims for bodily injury (BI) and property damage (PD) arising out of premises, operations, products, and completed operations; and advertising and personal injury (PI) liability.

**COMMERCIAL PROPERTY INSURANCE:** Insurance that insures against damage to the Insured's buildings and contents due to a covered cause of loss, such as a fire. The policy may also cover loss of income or increase in expenses that results from the property damage.

**CROSS LIABILITY COVERAGE:** Coverage in connection with the suit brought against an Insured by another party that has Insured status under the same policy. Cross-liability coverage is provided as an intrinsic feature of the standard Commercial General Liability policy, by means of the "Separation of Insureds" clause. Some Umbrella Liability and Professional Liability Insurance/Errors and Omissions Liability policies contain Insured-versus-Insured exclusions that eliminate Cross-Liability Coverage.

**DATA BREACH AND PRIVACY INSURANCE:** A form of Insurance also referred to as **CYBER INSURANCE** that covers consumers of technology services for various liability and property losses that result from an organizations engagement in a variety of electronic activities which may include Internet sales or the collection of customer data. This form of Insurance covers a variety of both first- and third-party losses with varying insuring agreements available based on need. Coverage is a separate form from a standard Commercial General Liability Insurance policy with no current standardized ISO form available.

**DEDUCTIBLE:** A portion of covered loss that is not paid by the Insurer. Most Commercial Property Insurance policies contain a per-Occurrence Deductible provision that stipulates that the

Deductible amount specified in the policy declarations will be subtracted from each covered loss in determining the amount of the Insured's loss recovery. In Commercial Property Insurance, the Deductible is usually subtracted from the amount of the loss, whereas in liability Insurance, the Deductible usually reduces the recovery for the Claim (loss) and may or may not erode the remaining available Insurance limit. See Self-Insured retention (SIR).

**DISABILITY BENEFITS:** A form of Insurance purchased by an employer which provides statutory benefits required by State law to an employee when he/she is disabled by an off-the-job-related injury or disease.

**DISTRIBUTED DENIAL OF SERVICE ATTACK:** A cyber-attack in which the perpetrator seeks to make a machine or network resource unavailable to its intended users by temporarily or indefinitely disrupting services of a host connected to the Internet.

**ENDORSEMENT:** A form bearing the language necessary to record a change in an Insurance policy.

**ENVIRONMENTAL LIABILITY INSURANCE:** Insurance that covers property loss and liability arising from pollution-related damages for sites that have been inspected and found uncontaminated. It is usually written on a Claims-Made basis. Generally, coverage includes statutory clean-up requirements, bodily injury and property damage third-party Claims, and legal expenses resulting from pollution or contamination incidents. The coverage kicks in both for incidents that are "sudden and accidental" and "gradual." Coverage also exists for business interruption losses.

**ERRORS AND OMISSIONS LIABILITY (E & O) INSURANCE:** See Professional Liability Insurance.

**EXCESS INSURANCE:** A policy or Bond covering the Insured against certain hazards and applying only to loss or damage in excess of a stated amount or specified primary or Self-Insurance amount, including the amount in excess of that retained by an entity for its own Self-Insurance/self-retention program.

**EXPERIENCE RATING:** A method used to determine a premium that is developed by comparing the actual loss experience of the Insured to the loss experience that is normally expected by others in the Insured's rating class or industry classification. This method is usually used for automobile liability, automobile physical damage, Commercial General Liability, Workers' Compensation and unemployment policies.

**GARAGEKEEPERS LEGAL LIABILITY:** An optional coverage designed to extend the Garage Liability Insurance policy of business owners to provide protection for vehicles while in the Insured's care, custody, or control. It is recommended that this coverage be written on a direct

primary basis, which provides coverage regardless of whether the Insured is legally obligated to do so.<sup>3</sup>

**GARAGE LIABILITY INSURANCE:** Insurance covering the legal liability of automobile dealers, garages, repair shops, and service stations for Claims of bodily injury and property damage arising out of business operations. Damage to vehicles is excluded from this coverage; however, Garagekeepers' Legal Liability coverage can be written as a part of the Garage Liability Insurance policy to cover that exposure.

**GENERAL AGGREGATE:** the maximum amount of money the Insurer will pay out during a Policy term. The General Aggregate limit places a ceiling on the Insurer's obligation to pay for property damage, bodily injury, medical expenses, lawsuits, etc. which may arise during the term of the Insurance Policy.

**INDEMNIFICATION CLAUSE:** Language inserted in contracts to protect the Agency in the event of a loss. The actual Insurance provided by the Contractor is the mechanism by which the Contractor would pay for its obligation to Indemnify the Agency for a loss arising out of work performed in connection with the contract (or project).

**INDEMNIFY:** To make compensation to an entity, person, or insured for incurred injury, loss, or damage.

**INSURANCE:** A contractual relationship, which exists when one party (the Insurer), for a consideration (the premium), agrees to reimburse another party (the Insured) for loss to a specified subject (the risk) caused by designated contingencies (hazards or perils).

**INSURED:** The person or organization protected under an Insurance contract.

**INSURER (ALSO KNOWN AS INSURANCE COMPANY, INSURANCE CARRIER OR UNDERWRITER):** The entity which provides insurance.

**INSURANCE SERVICES OFFICE, INC. (ISO):** The Insurance Services Office, Inc., an organization created for the purpose of developing standard Insurance forms, collecting statistical data, and promulgating rates for the Insurance industry. It is a provider of statistical, actuarial, underwriting, and Claims information and analytics; compliance and fraud identification tools; policy language; information about specific locations; and technical services.

**JOINT VENTURE:** A contractual business undertaking in which two or more parties combine their labor or property for a single undertaking and share profits and losses equally, or as otherwise agreed upon in contract. Joint ventures are not normally covered by a Commercial General Liability Insurance policy, unless specifically named.

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<sup>3</sup> Note: Consideration should be given to the fact that direct primary coverage does cost more than legal liability coverage.

**LLOYD'S OF LONDON:** A marketplace for large and/or unusual Insurance exposures. This association of independent underwriters is a place where Brokers representing Insurance applicants are able to contract with underwriters offering coverage. Lloyds does not directly underwrite policies but acts a regulator under which its members offer Insurance policies.

**LONGSHORE AND HARBOR WORKERS' COMPENSATION ACT (LHWCA):** The Longshore and Harbor Workers' Compensation Act, 33 U.S.C. § 901–950, commonly referred to as the "Longshore Act" or "LHWCA" is the statutory Workers' Compensation scheme, first enacted in 1927, that covers certain maritime workers, including most dock workers and maritime workers not otherwise covered by the Jones Act. In addition, Congress extended the LHWCA to cover non-appropriated fund employees (i.e. AAFES employees), Outer Continental Shelf workers, and U.S. government Contractors working in foreign countries. LHWCA coverage can be obtained under a standard Workers' Compensation policy with the purchase of an Endorsement.

**LOSS PAYEE:** The party to whom the Claim from a loss is to be paid. A Loss Payee can mean several different things; in the Insurance industry, the Insured or the party entitled to payment is the Loss Payee. A Loss Payee clause (or loss payable clause) is a clause in a contract of Insurance that provides, in the event of payment being made under the policy in relation to the Insured risk, that payment will be made to a third-party rather than to the Insured beneficiary of the policy. Such clauses are common where the Insured property is subject to a mortgage or other security interest and the mortgagee, usually a bank, requires the property be Insured and that such a clause be included. As a matter of practicality, such clauses are usually appended to the end of existing policies in a separate addendum after being negotiated between the Insurer and the Insured beneficiary.

**MCS-90 ENDORSEMENT:** An Endorsement that must be attached to the auto liability policy of certain regulated motor carriers to assure that federally mandated coverage (e.g., required liability limits, environmental restitution coverage) is in place. The Endorsement does not actually provide Insurance except on a reimbursement basis. For example, if the Insured motor carrier is Insured under a standard ISO, truckers or motor carrier policy without the broadened pollution liability coverage Endorsement (CA 99 48) attached, the motor carrier may have to reimburse the Insurer in the event the Insurer has to pay a pollution liability loss.

**NAMED INSURED:** The person, firm, or organization that enjoys the benefits of being Insured under the policy.

**NEW YORK STATE VENDOR(S):** A business that has operations in and is registered in New York State. This could mean being incorporated, a LLC, or DBA in New York State.

**OCCURRENCE:** An Accident, including continuous or repeated exposure to the same general harmful conditions, which results in bodily injury or property damage neither expected nor intended from the standpoint of the Insured.

**OCCURRENCE POLICY:** A policy under which all Claims occurring during the period of the policy are covered, irrespective of when the Claim is made. Any Claims occurring after the policy's expiration date are not covered. Contrast with Claims-Made Policy.

**OWNER CONTROLLED INSURANCE PROGRAM (Wrap-Up Insurance Program/ OCIP)<sup>4</sup>:** An arrangement whereby the owner of a construction project purchases the coverage for one or more lines of Insurance for all of the parties involved in the project (except Contractors specifically excluded under the policy). It produces savings by consolidating the Workers' Compensation, Commercial General Liability Insurance and Builder's Risk Insurance policies and implementing a comprehensive safety program for all the Contractors and subcontractors in a construction program. Occasionally, other coverages such as Professional Liability Insurance and environmental impairment (except the MCS-90 Endorsement), are added to the program as well.

Advantages of a Wrap-Up:

- Cost savings - the estimated cost savings to the owner of a well-managed "wrap-up" Insurance program are usually between 1.5% -2% of contract costs;
- Superior safety and loss control for workers and the general public because additional safety management is brought in to the construction project;
- Potential for Insurers to offer broader coverage and higher limits than would otherwise be available; and
- Improved Claims handling because one Insurance administrator handles all Claims, thus reducing confusion of cross Claims and access to records.

**PERSONAL AND ADVERTISING INJURY:** (1) A standard coverage (Coverage B) of the 1986 and later CGL forms. (2) A defined term in the standard CGL since 1998, it combines elements of the earlier separate categories of "Personal Injury" and "Advertising Injury." See also Advertising Injury; Personal Injury.

**PERSONAL INJURY:** Under Commercial General Liability Insurance coverage, a category of insurable offenses that produce harm other than bodily injury. As covered by the 1986 CGL policy, Personal Injury includes: false arrest, detention, or imprisonment; malicious prosecution; wrongful eviction; slander; libel; and invasion of privacy. Also addressed in the homeowners' policy. Under an Umbrella Liability policy, a broad category of insurable offenses that includes both bodily injury and the offenses defined as "Personal Injury" in CGL policies.

**PRODUCTS LIABILITY:** Liability arising out of manufactured goods after they leave the premises.

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<sup>4</sup> **Note:** State contracting Agencies should be familiar with NYS laws limiting the procurement opportunities specific to OCIP programs before binding such a policy.

**PRODUCTS/COMPLETED OPERATIONS:** One of the hazards ordinarily Insured by a Commercial General Liability Insurance policy. It comprises liability arising out of the Insured's products or business operations conducted away from the Insured's premises once those operations have been completed. It typically relates to Claims arising out of a contract.

**PROFESSIONAL LIABILITY INSURANCE (ERRORS AND OMISSIONS LIABILITY INSURANCE):** A form of liability insurance that insures against loss due to failure, through error or unintentional omission, such as architect and engineers design error(s) in their work. These policies provide Indemnification for third-party liability Claims due to negligence in the performance of professional services. Coverage for faulty construction work associated with projects is normally excluded under the policies. Such insurance is commonly required from licensed professionals such as architects and engineers, lawyers, accountants, Insurance Brokers, financial advisors and other professional service firms, but it also may be required for non-licensed consultants, executive recruiters, graphic designers, translators, travel agents and other professionals that provide advice to an Agency.

**RAILROAD PROTECTIVE LIABILITY INSURANCE:** Insurance coverage protecting a railroad from liability exposures due to the work of Contractors or subcontractors on or near the railroad right-of-way. This Insurance coverage is generally required by the railroad and lists the railroad as the Named Insured.

**RISK MANAGEMENT:** The practice of identifying, analyzing, and taking steps to reduce or eliminate exposures to loss faced by an organization. Although Risk Management has historically pertained to property and casualty loss exposures, it has recently been expanded to include management of financial risk exposures.

**SELF-INSURANCE:** Self-Insurance is a risk financing alternative method in which a calculated amount of money is set aside to compensate for a potential future loss.

If Self-Insurance is approached as a serious risk financing alternative technique, money is set aside using actuarial and Insurance information and the law of large numbers so that the amount set aside (similar to an Insurance premium) is enough to cover the future uncertain loss.

Self-Insurance is possible for any insurable risk, meaning a risk that is predictable and measurable enough in the aggregate to be able to estimate the amount that needs to be set aside to pay for future uncertain losses. For a risk to be insurable, it must represent a future, uncertain event over which the Insured has no control. Other characteristics which assist in making a risk self-insurable include the ability to price or rate the risk. If the insurable event is one in a large number of similar risks, the aggregate risk can be estimated according to the law of large numbers and the probability of that event occurring in the future can be quantified. Normally, catastrophic risks are not self-insured as they are highly unpredictable and high in loss-value. Catastrophic risks can be written in the traditional retail Insurance marketplace though many challenging and difficult to place risks may be underwritten by the re-Insurance or wholesale Insurance market. Any risk where the potential loss is so large that no one could afford to pay the market premium required to provide coverage would not be commercially insurable. An example is that earthquakes cannot be fully Insured against because an earthquake can cause more damage than any Insurer or the combined

Insurance market is willing to risk in total assets. However, Captives and Self-Insurance programs are often designed to provide for a part of a risk that would be catastrophic to the business concerned, or catastrophic risks that are often commercially uninsurable, such as tobacco litigation liability risks.

Full or exclusive Self-Insurance is rare, as a combination of Self-Insurance and commercial Insurance usually provides the best coverage for the self-insured. Usually, the predictable losses of the risk are retained and self-insured, forming a first or "working" layer of cover, and a stop-loss or stop-gap policy is purchased from the commercial Insurance market. The commercial Insurance market then pays for losses above the specified Self-Insurance limit per loss, thereby stopping the cost of losses to the self-insured above the retained values. Effectively the losses paid for by the Insured before the stop-loss policy pays becomes the Deductible layer. Depending on the level at which risks are stopped, commercial Insurance coverage should become less and less expensive the further away the commercial Insurer moves from the working layer of paying Claims each year.

**SELF-INSURANCE POOL OR TRUST:** A legal entity formed as a collective by a group of unrelated Insureds (members) for the purpose of pooling and retaining their own risks, as well as sharing the costs associated with administration of the Self-Insurance program.

**SELF-INSURED RETENTION (SIR):** A dollar amount specified in an Insurance policy (usually a liability Insurance policy) that must be paid by the Insured before the Insurance policy will respond to a loss. SIRs typically apply to both the amount of the loss and related costs, e.g., defense costs, but some apply only to amounts payable in damages, e.g., settlements, awards, and judgments. A SIR differs from a true Deductible in at least two important ways. Most importantly, a liability policy's limit stacks on top of a SIR while the amount of a liability Insurance Deductible is subtracted from the policy's limit. As contrasted with its responsibility under a Deductible, the Insurer is not obligated to pay the SIR amount and then seek reimbursement from the Insured; the Insured pays the SIR directly to the claimant. While these are the theoretical differences between SIRs and Deductibles, the actual policy provisions should be reviewed to ascertain the actual operation of specific provisions.

**SEPARATION OF INSURED'S CLAUSE:** Provision whereby the CGL policy applies separately to each Named Insured. This clause creates separate insurable interests in each Insured under the policy. The policy limits do not increase by the number of persons Insured.

**SUBROGATION:** Subrogation in its most common usage refers to circumstances in which an Insurance company tries to recoup expenses for a Claim it paid out when another party should have been responsible for paying at least a portion of that Claim.

More specifically, Subrogation is the legal technique under common law by which one party, commonly an Insurer (I-X) of another party (X), steps into X's shoes, so as to have the benefit of X's rights and remedies against a third party such as a defendant (D). Subrogation is similar in effect to assignment, but unlike assignment, Subrogation can occur without any agreement between I-X and X to transfer X's rights. Subrogation most commonly arises in relation to policies of Insurance, but the legal technique is of more general application. Using the designations above,

I-X (the party seeking to enforce the rights of another) is called the subrogee. X (the party whose rights the subrogee is enforcing) is called the subrogor.

In each case, because I-X pays money to X which otherwise D would have had to pay, the law permits I-X to enforce X's rights against D to recover some or all of what I-X has paid out. A very simple (and common) example of Subrogation would be as follows:

1. D drives a car negligently and damages X's car as a result.
2. X, the insured party, has Collision Insurance, and Claims (i.e., asks for payment) under his or her policy against I-X, his or her Insurer.
3. I-X pays in full to have X's car repaired.
4. I-X then sues D for negligence to recoup some or all of the sums paid out to X.
5. I-X receives the full amount of any amounts recovered in the action against D up to the amount to which I-X Indemnified X. X retains none of the proceeds of the action against D except to the extent that they exceed the amount that I-X paid to X.

If X were paid in full by I-X and still had a Claim in full against D, then X could recover "twice" for the same loss. The basis of the law of Subrogation is that when I-X agrees to Indemnify X against a certain loss, then X "shall be fully Indemnified, but never more than fully Indemnified... if ever a proposition was brought forward which is at variance with it, that is to say, which will prevent [X] from obtaining a full Indemnity, or which will give to [X] more than a full Indemnity, that proposition must certainly be wrong."

I-X will normally (but not always) have to bring the claim in the name of X. Accordingly, in situations where Subrogation rights are likely to arise within the scope of a contract (i.e. in an indemnity Insurance policy) it is quite common for the contract to provide that X, as subrogor, will provide all necessary cooperation to I-X in bringing the Claim.

Subrogation rights can also come into play when X brings the action against D. To the extent that X's recovery against D reflects damages incurred by X that were already covered by I-X, I-X will have a lien on the proceeds of the action. In the collision example above, it would be typical for X to sue D, asserting as one element of damage the cost of repairing X's car. I-X's lien would extend to whatever D paid X that was allocable to that Claim, but not to what was allocable to X's other Claims against D, such as lost wages or pain and suffering.

Subrogation is an equitable remedy and is subject to all the usual limitations that apply to equitable remedies.

Although the basic concept is relatively straightforward, Subrogation is considered to be a highly technical area of the law.



**SUBROGATION WAIVER:** An agreement by which one party agrees to relinquish its Subrogation rights against the other in the event of a loss.

**SURETY BOND:** A promise to pay one party (the obligee) a certain amount if a second party (the principal) fails to meet some obligation, such as fulfilling the terms of a contract. The Surety Bond protects the obligee against losses resulting from the principal's failure to meet the obligation.

**TAIL COVERAGE:** Provides coverage for Insurance Claims made following the expiration of the policy. This optional coverage is generally available under most Claims-Made Policies.

**TECHNOLOGY ERRORS & OMISSIONS LIABILITY:** A form of Errors and Omissions Liability Insurance that ensures the responsibility of Contractors for third-party liability Claims due to negligence in the performance of computer-related technology services. This form of Insurance contains a number of the same insuring agreements as Data Breach and Privacy Liability Insurance policies. Coverage is a separate form from a standard Commercial General Liability Insurance policy with no current standardized ISO form available. There is no single standard Technology Errors and Omissions Liability form.

**UMBRELLA LIABILITY POLICY:** Umbrella Insurance refers to a liability Insurance policy that protects the assets and future income of the policyholder above and beyond the standard limits on its primary policies. It is distinguished from an Excess Liability Policy in that Excess coverage goes into effect only when all underlying policies are totally exhausted, while Umbrella is able to "drop down" to fill coverage gaps in underlying policies. Therefore, an Umbrella Liability Policy can become the primary policy "on the risk" in certain situations. The term "Umbrella" refers to how the policy shields the Insured's assets more broadly than primary coverage.

Typically, an Umbrella Liability Policy is pure liability coverage over and above the coverage afforded by the regular policy and is sold in increments of one million dollars. The term "Umbrella" is used because it covers liability Claims from all policies underneath it, such as auto Insurance and homeowner's Insurance policies. For example, if the Insured carries an auto Insurance policy with liability limits of \$500,000 and a homeowner's Insurance policy with a limit of \$300,000, then with a million-dollar Umbrella, the Insured's limits become in effect, \$1,500,000 on an auto liability Claim and \$1,300,000 on a homeowners' liability Claim.

An Umbrella Liability Policy provides broad Insurance beyond traditional home and auto. It provides additional liability coverage above the limits of homeowner's, auto, and boat Insurance policies. It can also provide coverage for Claims that may be excluded by the primary policies.

**UNDERGROUND PROPERTY DAMAGE:** Property damage to wires, conduits, pipes, mains, sewers, tanks, tunnels, any similar property, and any apparatus used with them beneath the surface of the ground or water caused by either a person who is not the owner or by natural phenomena.

**UNMANNED AIRCRAFT SYSTEM (UAS):** An aircraft and its associated elements (including communication links and the components that control the unmanned aircraft) operated without the possibility of direct human intervention from within or on the aircraft.

**WORKERS' COMPENSATION:** A form of Insurance purchased by an employer which provides no-fault statutory benefits prescribed in State law to an employee (or the employee's family) due to a job-related injury (including death) resulting from an Accident or occupational disease.

## **IV. INTRODUCTION**

### **Distribution**

This set of instructions should be distributed to Agency personnel who:

- 1) Draft and/or negotiate capital, operating, and revenue contracts;
- 2) Draft and negotiate real estate agreements including leases and licenses;
- 3) Draft and review permits, and/or
- 4) Are responsible for administering any of the above, including reviews of evidence of Insurance provided by Contractors.

### **Purpose**

An Agency requires most suppliers of goods and services, licensees, permittees, Contractors and tenants to maintain Insurance covering the Agency against Claims or judgments. The Agency requires proof that these requirements have been met, usually through the submission of a Certificate of Insurance and applicable amendatory Endorsements. These guidelines provide guidance for including Insurance requirements in contracts and monitoring compliance with those requirements.

Most contracts contain a description of the required Insurance and an Indemnification Clause. The Indemnification Clause automatically takes effect when the contract is signed, but evidence that the required Insurance is in place must be requested and provided in an acceptable format. These guidelines are not intended to provide advice on drafting hold harmless/Indemnification Clauses. Those clauses should be drafted in conjunction with Agency counsel.

# CHAPTER 1 - HOW TO USE THESE GUIDELINES

This chapter describes the steps that are necessary to develop or draft Insurance clauses in Agency contracts, leases, permits, and other agreements where a Contractor is required to provide Insurance; the resources available in these guidelines to assist in that process; how to communicate Insurance requirements to the Contractor, and how to follow-up once Insurance documentation has been received.

## STEP 1. SELECT APPROPRIATE INSURANCE REQUIREMENTS

Insurance requirements must be specified as part of the initial procurement documents (Invitation for Bids, Request for Proposals or Letting Proposal) in order to put all prospective Contractors on notice as to the types of Insurance and required limits applicable to the prospective contract. This may be done by providing Insurance specifications or by referencing a draft contract that sets forth the Insurance requirements to be applied to the contract. As recommended by these guidelines, Insurance specifications will vary according to the scope of services and the value of the contract, so the Agency should be prepared with specifications that are applicable to the goods and services that are being procured.

Chapter 2 provides a description of those types of Insurance coverage that are most frequently required in Agency contracts and explains when each line of coverage should be required.

[**Note:** The guidelines in Chapter 2 list most situations that require Insurance language, but do not fit all situations. If a project involves an unusual activity or risk that is not included in this list, or if the guidelines do not appear to cover a given situation, the Agency's Insurance Analyst should be consulted<sup>5</sup>].

## STEP 2. SELECT APPROPRIATE INSURANCE LANGUAGE

After the Insurance requirements have been determined, it is necessary to describe those requirements in the contract/solicitation language. Sample contract/solicitation language is provided in Chapter 3, which is divided into three sections.

- The "Insuring Requirements" language serves as an introduction to the Insurance specifications and should be used in every contract/solicitation. This language outlines when Insurance is required and what type of Insurance carrier that will be accepted by the Agency.
- The "General Conditions" language details those requirements that will be applied to all Insurance policies provided by the Contractor. It should also be included in every contract/solicitation.
- The third section, "Specific Coverages and Limits" provides model contract Insurance language for each line of coverage that may be required, based on the activities and risks

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<sup>5</sup> The term "Insurance Analyst," as used in these guidelines, shall refer to the position(s) in the Agency that is responsible for reviewing, evaluating, and recommending for (dis)approval Insurance documentation submitted by outside Contractors, etc. for compliance with the contract documents. The Insurance Analyst may also be responsible for recommending alternative Insurance language and/or requirements for use in contract documents based on the Agency's procedures and needs.

anticipated. Certain lines of coverage, including Workers' Compensation, Disability, and Commercial General Liability Insurance should be required in every contract because of the nature of the coverage. Other lines may be stricken from the contract if they do not apply to the activities and/or risks anticipated by the scope of the contract. Similarly, the Agency may need to add to the list of required Insurance policies if the lines described in these guidelines do not adequately address the risks posed by the scope of the contract.

***The Agency must determine which lines of coverage apply to the contract at hand and modify the language as required. Any changes to or deviations from the model language offered in Chapter 3 should be reviewed with the Agency's Insurance Analyst.***

### **STEP 3. ADD APPROPRIATE INSURANCE LIMITS TO CONTRACT LANGUAGE**

Contracts must specify the amount of each line of Insurance coverage that the Contractor is to provide. Those amounts should be based on the potential exposure to Claims stemming from the goods, work or operations that are the subject of the contract.

Chapter 4 includes three (3) matrices indicating minimum policy limits, as recommended by the Council of Contracting Agencies' Insurance Subcommittee. Matrix A addresses Capital Construction operations and those forms of Insurance coverage that are most frequently required to address the exposures inherent in construction. Where applicable, Matrix A calls for policy limits to be applied on a per-project or per-contract basis, and the recommended limit may vary based on the value of that project or contract, as indicated on Matrix A or in the footnote's thereto. Matrix B addresses Building Services and those forms of Insurance coverage that are most frequently required to address the exposures inherent in that work. Matrix C addresses Procurement/Services/Commodities contracts. The matrices list the types of contracts most frequently used by Agencies, as well as the forms of Insurance that are most frequently required. As explained above, the recommended limit may vary based on the value of the contract and/or project at hand, but consideration should be given to including Insurance requirements in all transactions, including those which fall under an Agency's discretionary purchasing guidelines.

The recommended limits and forms of Insurance coverage listed in the matrices contemplate only those exposures that are considered most common for the subject operations; ***the limits and lines of Insurance coverage shown in the matrices are not intended to apply to all contracts or anticipated operations.*** The Agency must take into consideration the potential exposure created by the goods, work or operations that are the subject of the contract. The forms of Insurance coverage required, as well as the limits required for each line of coverage, should be adjusted commensurately.

### **STEP 4. PROVIDE THE CONTRACTOR WITH GUIDELINES FOR SUBMITTING EVIDENCE OF INSURANCE**

If it has not already been communicated as part of the procurement process, once a Contractor has been selected to perform work pursuant to a contract where Insurance is required, the Contractor should be provided with the guidelines for submitting evidence of Insurance to the Agency. At a minimum, those guidelines should include a sample Certificate of Insurance form, information on any applicable amendatory Endorsements, a copy of the Workers' Compensation/NYS Disability Form List. The ACORD 25 is the Insurance industry standard Certificate of Liability Insurance form. In addition, Agencies may require submission of an ACORD 27 (Certificate of Property Insurance), ACORD 28 (Certificate of Commercial Property Insurance) or ACORD 855

(Construction Certificate of Liability Insurance). An ACORD is not acceptable proof of New York State Workers' Compensation and Disability Benefits coverage for New York State governmental entities. Proof of those coverages must be documented on forms specified by the Chair of the New York State Workers' Compensation Board (see Exhibit A.5-A.8).

[**Note:** Based on its specific needs and procedures, each Agency should develop its own requirements for securing evidence of Insurance from Contractors and subcontractors and communicate those requirements in writing. These requirements may include, for example, original documents submitted by an Insurance Carrier or Agent on behalf of the Contractor. Sample guidelines together with a sample letter to Contractors and subcontractors are provided in Exhibit B.2].

## **STEP 5. REVIEW INSURANCE DOCUMENTATION FOR COMPLIANCE**

The Agency must review and approve all Certificates of Insurance and other forms of Insurance documentation submitted by Contractors and subcontractors prior to the start of work. Requests for approval must be sent to the appropriate Insurance Analyst via an Insurance Approval Form (see Exhibit C.2), or an equivalent form. Copies of the relevant Insurance requirements and indemnification language, as well as some documentation identifying the contract (such as the cover sheet or first page of the contract), should accompany the request.

The Insurance Analyst will review the Certificate(s), ACORD 855 and relevant Endorsements or other documentation, as required by contract. During this review particular attention should be given to determining if the proposed coverage contains any exclusions that the Agency should not accept (for example: height, gravity related and geographic exclusions along with exclusions for injuries to employees and subcontractors and New York State Labor Law exclusions). The ACORD 855 is an excellent way to determine if these exclusions are included in the coverage offered by a Contractor or subcontractor. Attached hereto as Exhibit A.2 is a sample ACORD 855 NY and guidance on how to review that form. If the documentation is not satisfactory, the Insurance Analyst will promptly notify the Contractor and/or the contract/ project manager, in accordance with the Agency's procedure, with an explanation as to why the Insurance has not been approved. If the documentation meets approval, the Insurance Analyst signs the Insurance Approval form and returns it to the appropriate party, in accordance with the Agency's procedures.

## **STEP 6. FOLLOW-UP ON EXPIRING INSURANCE**

If any policies will expire during the term of the contract, the Insurance Analyst will diary the forms for 30 days before the expiration of the Insurance. At that time, if proof of renewal or replacement of coverage has not been received, the Insurance Analyst will send a letter to the Contractor stating that the Agency requires receipt of a new Certificate of Insurance before the existing coverage expires.

[**Note:** Each individual Agency should revise the above processes as necessary to meet its specific needs and internal policies/operations].

## **CHAPTER 2 - INSURANCE COVERAGES – DESCRIPTIONS AND APPLICATIONS**

This chapter describes each line of Insurance coverage and outlines the basic considerations in compiling Insurance language. It is intended to provide guidance to those personnel at the Agency who are responsible for drafting language for use in contracts. The guidelines in this chapter were used to develop the model contract Insurance language set forth in Chapter 3 and the recommended policy limits set forth in Chapter 4.

The topics in this chapter are as follows:

1. General Requirements for all Insurance Policies
  - a. General Provisions
  - b. Certificate of Insurance Requirements
  - c. Deductible & SIR Limits Requirements
  - d. Occurrence vs. Claims-Made Policies
  - e. Additional Insured
2. Commercial General Liability Insurance Policies
3. Workers' Compensation and Disability
4. Business Automobile Liability
5. Railroad Protective Liability Insurance
6. Environmental Liability Insurance
7. Builder's Risk Insurance/Installation Floater
8. Owners and Contractors Protective
9. Professional Liability Insurance/Errors and Omissions Liability Insurance
10. Data Breach and Privacy Liability Insurance (Cyber Insurance)
11. Technology Errors and Omissions Liability
12. Crime Insurance
13. Marine Protection & Indemnity, Hull & Machinery, Jones Act, and United States Longshore and Harbor Workers' Compensation Act Coverage
14. Garage Liability Insurance
15. Excess and Umbrella Liability Policies
16. Construction Manager's Professional Liability Insurance/Errors and Omissions Liability Insurance

17. Unmanned Aircraft System (“UAS”) Liability
18. Commercial Property Insurance

Anyone drafting language should contact their Agency’s Insurance Analyst for assistance with the Insurance requirements.



## **1. GENERAL REQUIREMENTS FOR ALL INSURANCE POLICIES**

### **General Provisions**

All contracts, agreements, leases, licenses, and permits should include language that will provide for the following (See also Chapter 3 - Model Insurance Language):

- Policies must be written by companies with an A.M. Best Company rating of “A-” or better or otherwise be acceptable to the Agency.
- Non-admitted carriers<sup>6</sup> will only be accepted when coverage cannot be secured from an admitted carrier, as evidenced by appropriate Excess Line Association of New York (“ELANY”) documentation (See Certificate of Insurance Requirements below).
- Unless otherwise agreed to by the Agency, policies shall be written so as to include a requirement for notice of cancellation or non-renewal in accordance with the New York State Insurance Law.<sup>7</sup> Agencies may want to consider requiring Contractors to provide notices of cancellation or non-renewal revised from Insurers.
- Policies must state or be endorsed to provide that the coverage afforded shall apply on a primary and not on an excess or contributory basis with any policies which may be available to the Agency. Any other Insurance maintained by the Agency shall be in excess of, and shall not contribute with, the Contractor’s or subcontractor’s Insurance regardless of the “other insurance clause” contained in the Agency’s own policy of Insurance, if applicable. A copy of the Endorsement reflecting this requirement may be requested by the Agency.
- Upon policy renewal/expiration, evidence of renewal or replacement of coverage that complies with the Insurance requirements set forth in the contract shall be delivered to the Agency.
- Policies must be endorsed to provide that there shall be no right of Subrogation against the Agency. To the extent that any of the Contractor’s policies of Insurance prohibit such a waiver of Subrogation, the Contractor shall secure the necessary permission to make this waiver.
- Certificates of Insurance must be supplied as evidence of such aforementioned policies (except for Railroad Protective Liability Insurance, where a policy is required); however, if requested by the Agency, the Contractor shall deliver to the Agency a copy of such policies, certified by the Insurance carrier as being true and complete.
- The Contractor shall furnish evidence of acceptable policies to the Agency before any work is started.

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<sup>6</sup> Non-admitted carriers are insurance carriers who have not been authorized to conduct business in the State of New York by reason of the fact that they are not subject to supervision by the State of New York. That said, it is not illegal to procure a policy from these insurance carriers, as their insurance policy forms and rates must still meet the minimum standards of the New York Insurance laws and regulations.

<sup>7</sup> The requisite notice can be provided through the policy itself or through an Endorsement to the policy, such as ISO Form CG 02 24 10 93.

- If, at any time during the period of the contract, Insurance as required is not in effect, or proof thereof is not provided to the Agency, the Agency shall have the options to: (i) direct the Contractor to suspend work with no additional cost or extension of time due on account thereof; (ii) direct the Contractor to immediately cease work under the contract and not resume work under the contract until authorized to do so by the Agency; (iii) require the Surety, if applicable, to secure appropriate coverage and/or purchase Insurance complying with the contract and charge back such purchase to the Contractor<sup>8</sup>; or (iv) treat such failure as an event of default. Any delay or time lost as a result of the Contractor not having Insurance required by the contract shall not give rise to a delay Claim or any other Claim against the Agency.
- The Contractor shall procure any additional Insurance policies necessary to obtain required permits or otherwise comply with applicable laws, ordinances, regulations, or as required by the Agency to secure the interest of the Agency regarding the performance of the work.
- In the event of multi-awards to one Contractor, a blanket Certificate of Insurance is acceptable, as long as each contract number is referenced.
- Should the Contractor engage a subcontractor, the Contractor shall impose the Insurance requirements of this document on the subcontractor, as applicable. Required Insurance limits should be determined commensurate with the work of the subcontractor. Proof thereof shall be supplied to the Agency.

### **Certificate of Insurance Requirements**

- Must be provided on a form approved by the New York State Department of Financial Services. Approved forms include the ACORD 25, 27, 28 and 855 NY. Each Agency must determine on its own what form(s) or certificates are acceptable and communicate that determination to the Contractor. The ACORD 25 is the Certificate of Liability Insurance form. In addition, the ACORD 855 NY is the Construction Certificate of Liability Addendum, which is used primarily for construction contracts, but can also be used for other contracts to supplement the ACORD 25 with more information about the underlying policy's coverage. For construction projects, requiring the ACORD 855 NY is recommended. Attached hereto as Exhibit A.2 is a sample ACORD 855 NY and guidance on how to review that form. The ACORD 27 and 28 provide evidence of Commercial Property Insurance.
- An ACORD Certificate is not acceptable proof of Workers' Compensation and Disability Benefits insurance for New York State governmental entities. Proof of Disability and Workers' Compensation insurance must be provided on the forms required by the New York State Workers' Compensation Board. (See Exhibit A.5-A.8)

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<sup>8</sup> This provision is most applicable to construction contracts. Agencies should check with their Insurance Analyst regarding its applicability to a particular contract.

- If the Contractor is a New York State Vendor and the coverage is provided by a non-admitted carrier, an ELANY Affidavit must accompany the certificate<sup>9</sup>.
- Only original documents (Certificates of Insurance and other attachments) will be accepted.
- Must indicate Named Insureds, as required. The Named Insured listed on the Certificate must match the name of the entity entering into the contract. This pertains to all lines of coverage and all forms of the contracting entity, including Joint Ventures. It is not sufficient to accept Insurance, including evidence of Workers' Compensation, in the name of the individual parties to the Joint Venture.
- Must be signed by an authorized representative of the Insurance carrier or producer. [**Note:** Insurance Agents are generally authorized representatives of the Insurance carrier. Insurance Brokers may or may not be authorized representatives. Brokers should be requested to provide a letter of authorization from the Insurance carrier. Further, only Insurance Agents and Insurance Carriers licensed in New York State are able to issue the proof of coverage required for Workers' Compensation and Disability benefits. Insurance Brokers are not authorized to issue these documents.].
- Must disclose any Deductible, Self-Insured Retention, Aggregate Limit or any exclusions to the policy that materially changes the coverage, and Deductibles or Self-Insured Retentions above \$100,000.00 shall be subject to approval from the Agency.
- Must indicate the Additional Insureds, as required.
- Must reference the contract by number on the face of the certificate.

### **Deductible & SIR Limits Requirements**

- Certificates must disclose any Deductible, Self-Insured Retention, Aggregate Limit or any exclusions to the policy that materially changes the coverage, and Deductibles or Self-Insured Retentions above \$100,000.00 shall be subject to approval from the Agency. Additional security may be required in certain circumstances.
- Self-Insurance or high Deductible programs disclosed by the Contractor require further investigation to ensure that the Agency does not assume the risk that the Self-Insurance program fails or is unable to respond to Claims as intended. The Insurance Analyst responsible for confirming compliance should direct the Contractor to provide additional information about the Self-Insurance plan. Plans administered by an Insurance company that pays the Claims and collects from the Contractor are usually acceptable. Plans administered by the Contractor may be unacceptable in the absence of extra security in the form of an Insurance trust, a Bond and/or a letter of credit. Self-Insurance plans may require additional monitoring above and beyond traditional Insurance programs/policies.

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<sup>9</sup> Please note that ELANY will only provide documentation for Contractors that are New York State Vendors. If the Contractor is not a New York State Vendor, it is suggested that the Agency make a determination on whether to accept the offered coverage by looking at the proposed Insurer's AM Best rating, the coverage provided, the risk involved and other pertinent factors.

- The Contractor shall be responsible for all Claim expenses and loss payments within the Deductible or Self-Insured Retention.

### **Occurrence vs. Claims Made Policies**

- Generally, all policies must be written on an Occurrence basis. However, under certain circumstances the Agency may elect to accept policies written on a Claims-Made basis.

[**Note:** There are important differences between “Claims-Made” and “Occurrence” Policies. Claims-Made Policies will only pay Claims that are filed during the period covered by the policy. Occurrence Policies will pay Claims that occur during the period covered by the policy regardless of when the Claim is filed].

Generally, Professional Liability Insurance/Errors and Omissions Liability Insurance policies are written on a Claims-Made basis, while Commercial General Liability Insurance policies are Occurrence based. Claims-Made Policies are substantially cheaper than Occurrence Policies, and Insurance companies sell both kinds of policies based on their client’s needs. It is strongly recommended to require policies to be written on an Occurrence basis wherever possible.

- For both Occurrence based and Claims-Made Policies, coverage shall remain in force throughout the performance of the services and for three (3) years after completion of the contract<sup>10</sup>.
- For policies which are Claims-Made, the Contractor must purchase, at its sole expense, Tail Coverage of up to three (3) years after work is completed if coverage is cancelled or not renewed, or coverage is moved to an Occurrence form. Written proof of this extended reporting period must be provided to the Agency prior to expiration or cancellation.

### **Additional Insured**

- The term generally applies to liability Insurance (e.g. CGL, Business Automobile Liability, and Cyber Insurance) and Commercial Property Insurance but is an element of other policies as well.
- Additional Insureds cannot be added to a Professional Liability Insurance/Errors and Omissions Liability Insurance policy because the professional’s client usually does not perform professional services and, therefore, does not have the risk that the policy is designed to cover.
- It is recommended that Agencies always request to be added as an Additional Insured on a primary and non-contributory basis onto a Contractor’s CGL policy and Business Automobile Liability policy.

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<sup>10</sup> Agencies should consider the nature of the contract. Three years may not be needed for certain commodity contracts and policies covering certain type of Insurance, such as Cyber Insurance and Technology Errors and Omissions Liability, generally do not provide the option for Tail Coverage for more than one (1) year.

- An Agency often becomes an Additional Insured by means of an Endorsement added to the policy which either identifies the individual or entity party by name or by a general description contained in a Blanket Additional Insured Endorsement. It is important to note that the Additional Insured Endorsement does not add an individual, corporation, or governmental entity to the list of Named Insureds. It does, however, afford the Additional Insured similar coverage available for the Named Insured.

## COMMERCIAL GENERAL LIABILITY INSURANCE POLICIES

### *DESCRIPTION*

The CGL policy expresses the Insurance company's duty to pay on behalf of an Insured all sums, which an Insured shall become legally obligated to pay as damages because of bodily injury or property damage to which the Insurance applies caused by an Occurrence<sup>11</sup>. However, the intent is to provide coverage for any adverse condition that continues over a long period and eventually results in bodily injury or property damage, as well as an event that happens suddenly and results in immediate bodily injury or property damage. It also expresses the Insurer's right and duty to defend any suit against the Insured seeking damages on account of bodily injury or property damage, even if any of the allegations of the suit are groundless, false, or fraudulent. The coverage form limits all loss payments to two Aggregate Limits: one for Products/Completed Operations and one for all other loss.

#### Standard ISO Coverages:

- Contractual liability coverage provides protection for liability assumed by defined contract.
- Personal injury liability coverage provides protection against injuries of a non- physical nature, such as false arrest, detention or imprisonment, slander, and libel.
- Products Liability provides coverage for a product, which is sold, handled, or distributed by a supplier. Completed Operations provides coverage for the liability incurred by a Contractor for property damage or bodily injury that may occur once contracted operations have ceased or been abandoned. Even though the operations are deemed to be "completed" by the Contractor, the loss or injury is deemed to be as a result of those operations.
- Premises and operations - legal liability can arise out of the ownership and maintenance of the premises where the firm does business or where the firm performs their work.
- Independent Contractors Liability (a/k/a subcontractor) provides coverage for the contingent liability hazard, which arises whenever a Contractor hires a subcontractor or independent Contractor to perform work on its behalf.

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<sup>11</sup> Non-US based markets sometimes use different terminology for what are effectively the same coverage as the standard US CGL Insurance. For example, the United Kingdom's Public Liability is defined as "Legal Liability for accidental bodily injury or illness to any person (other than employees) or accidental loss of or damage to their property arising in connection with the business happening anywhere within the territorial limits during the period of Insurance." This definition is a fair characterization of US CGL Insurance coverage.

### Coverage Extensions:

- Liquor liability for the sale of liquor protects the Insured against liability imposed by reason of manufacturing, distributing, selling, serving or giving alcoholic beverages to the public if the Insured is in that business or is a landlord of such a business.
- Contractual Liability may be endorsed or extended to include coverage, normally excluded, for construction or demolition operations performed within 50 feet of railroad tracks.

### ***REQUIREMENTS FOR COMMERCIAL GENERAL LIABILITY INSURANCE POLICIES***

All Contractors, doing business pursuant to a contract with the Agency are required to submit proof of CGL insurance. The Contractor shall maintain CGL with no less than the following limits and coverages:

- Each Occurrence Limit – as specified in Column C of the matrices (see Chapter 4)
- General Aggregate: - as specified in Column D of the matrices (see Chapter 4)
- Products/Completed Operations Aggregate: - Must be equivalent to the General Aggregate
- Personal /Advertising Injury Liability: \$1,000,000
- Damage to Rented Premises: (Standard is \$50,000)
- Medical Expense:(Standard is \$5,000)
- Certificate must indicate that Aggregate Limits apply on a per location or per project basis [Note: this requirement may not be applicable for some professional services].
- Contractual liability coverage always required.
- Independent Contractors coverage always required.
- ISO Form CG 00 01 01 96 or equivalent, approved by the Agency, always required<sup>12</sup>.
- Additional Insured Endorsement CG 20 10 11 85 or equivalent.

[Note: ISO form CG 20 10 11 85 has been replaced with subsequent and revised versions of the CG 20 10 form over the last several years and, as a result, most Insurance carriers no longer use this specific form. However, these subsequent revisions exclude certain facets of coverage that are important to the Agency (specifically coverage during the Products/Completed Operations phase), and the scope of the coverage afforded by the CG 20 10 11 85 continues to be the standard for compliance with contract requirements. Insurance carriers can provide the same scope of coverage specified in the CG 20 10 11 85 form by attaching their own company Endorsements, or combinations of other ISO forms, as applicable. The Agency should evaluate the content of the Endorsement and the coverage it affords, without regard to specific Endorsement numbers, to determine the adequacy of the coverage provided. If the Agency chooses to update its requirements, it is recommended that the forms CG 20 10 12 19 or CG 20 38 12 19 (or the equivalent) be required for ongoing work and operations and the CG 20 37 12 19 (or the equivalent) be

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<sup>12</sup> Attention should be paid to the use of Artisan insurance policies. These forms may not provide coverage that is equivalent to ISO form CG 00 01.

required for completed operations. For ongoing operations and work the Agency will commonly review language which may read: “Who Is An Insured is amended to include as an Additional Insured the person(s) or organization(s) *shown in the Schedule*, but only with respect to liability for “bodily injury,” “property damage” or “Personal and Advertising Injury” caused, in whole or in part, by: 1. Your acts or omissions; or 2. The acts or operations of those acting on your behalf; in the performance of your ongoing operations for the Additional Insured(s) at the location(s) designated above.” Common completed operations language will read: “Who Is An Insured is amended to include as an Additional Insured the person(s) or organization(s) *shown in the Schedule*, but only with respect to liability for ‘bodily injury’ or ‘property damage’ caused, in whole or in part by ‘your work’ at the location designated and described in the Schedule of this Endorsement performed for that Additional Insured and included in the ‘Products/Completed Operations hazard’.”]

- Deletion of XCU exclusion.
- For work involving construction, coverage for bodily injury and/or property damage from construction means and methods (CG 22 79 04 13 or CG 22 80 04 13 or an equivalent).
- Products/ Completed Operations always required.

[**Note:** Products/Completed Operations coverage must be provided for a minimum of three years after the completion of the work. Products/Completed Operations aggregate must be at least equal to the General Aggregate. The Agency should require an Endorsement to extend Completed Operations coverage for three years beyond completion when a project involves a Joint Venture].<sup>13</sup>

- Deletion of railroad 50-foot exclusion:  
[**Note:** If the activity involves construction or demolition within 50 feet of stations, yards, tracks, or other railroad property, the exclusion of coverage for work done within 50 feet of railroad property must be deleted].
- Insurance policies are required to provide primary and non-contributory coverage for the Agency to cover Claims that arise out of the permitted work/operations. Insurance policies that remove or restrict blanket contractual liability located in the “insured contract” definition (as stated in Section V, Number 9, Item f in the ISO CGL policy) so as to limit coverage against Claims that arise out of the work, or that remove or modify the “insured contract” exception to the employers liability exclusion, or that do not cover the Additional Insured for Claims involving injury to employees of the Named Insured or subcontractors, are not acceptable.

## **WORKERS’ COMPENSATION AND DISABILITY**

### ***DESCRIPTION***

There are three separate coverages in the Workers’ Compensation policy:

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<sup>13</sup> Completed Operations being required for three years post completion of a project typically means the Contractor must simply renew their coverage for those three years. But when the coverage was part of a project specific policy that expires at the end of the project then there is a need to require “extended Completed Operations coverage” for a prescribed period. Three years is common, and the market can provide it.

- **Part One: Refers to Workers' Compensation Insurance.** Under this section, the Insurer agrees to pay all Workers' Compensation benefits and other benefits that the employer must legally provide to covered employees who have a job-related injury or an occupational disease. There are no policy limits for part one. The Insurer instead pays all benefits required by the Workers' Compensation law of any state listed in the policy declarations.

Under certain conditions, the employer can be held responsible for payments made by the Insurer that exceed regular Workers' Compensation benefits. The employer is responsible for any payments in excess of the benefits regularly provided by the Workers' Compensation Law because of serious and willful misconduct; knowingly employing an employee in violation of the law; failing to comply with a health or safety regulation; or discharging, coercing, or discriminating against any employee in violation of the Workers' Compensation Law. The employer must reimburse the Insurer for any payments that exceed regular Workers' Compensation benefits.

- **Part Two: Employer's Liability Insurance -** Part two refers to employer's liability Insurance that covers employers against lawsuits by employees who are injured in the course of employment. This part is similar to other liability Insurance policies where negligence must be established before the Insurer is legally obligated to pay.
- **Part Three: Other States' Insurance –** Part three of the Workers' Compensation and employers' liability policy provides other-states' Insurance. It should be noted that "other-states'" Insurance is no longer valid coverage for an entity securing a contract, permit, license with/from a government agency in New York State as a result of changes to Section 57 of the New York State Workers' Compensation Law, implemented as part of the 2007 Workers' Compensation Reform Act. "Full" New York State coverage, affording full NYS benefits, is required. "Full" Workers' Compensation coverage (Part One) applies only to those states listed on Item 3A on the policy's Information Page

## ***REQUIREMENT FOR WORKERS' COMPENSATION AND DISABILITY POLICIES***

### **Workers' Compensation Insurance:**

New York State Workers' Compensation Law (WCL) Sections 57 and 200 require the heads of all municipal and State entities to ensure that businesses applying for permits, licenses or contracts have appropriate Workers' Compensation and Disability Benefits Insurance coverage. These requirements apply to both original contracts and renewals, whether the governmental entity is having the work done or is simply issuing the permit, license or contract.

Further, Agencies may choose to require that **ALL** Contractors doing business pursuant to a contract are required to submit proof of Workers' Compensation (WC) coverage and Disability Benefits, including self-employed individuals and others who may otherwise be exempt under the Workers' Compensation Law. This additional requirement protects the Agency from potential fiscal responsibility for injuries to uninsured workers. **If implemented, any waiver of this requirement must be approved by the Agency and should only be granted in unique or unusual circumstances (e.g. if all work is done outside of New York State).** It is recommended that waivers be granted only after consultation with the NYS Workers' Compensation Board.

**Evidence of coverage must be provided on the forms specified by the Chair of the New York State Workers' Compensation Board. An ACORD form is NOT acceptable proof of Workers' Compensation coverage to satisfy these statutory requirements.** In order to provide



proof of compliance with the requirements of the New York State Workers' Compensation Law pertaining to Workers' Compensation coverage, a Contractor must:

- A. Be legally exempt from obtaining Workers' Compensation coverage; or
- B. Obtain such coverage from an Insurance carrier; or
- C. Be a New York State Workers' Compensation Board approved self-insured employer or participate in an authorized Self-Insurance plan.

A Contractor seeking to enter into a contract with a municipal or State entity must provide one of the following forms showing proof of coverage or an exemption:

- A. Form CE-200, Certificate of Attestation for New York Entities with No Employees and Certain Out-of-State Entities, That New York State Workers' Compensation and/or Disability Benefits Insurance Coverage is not Required, which is available on the New York State Workers' Compensation Board's website (<http://www.wcb.ny.gov>); or
- B. Certificates of Workers' Compensation Insurance:
  - a. Form C-105.2 (9/07) if coverage is provided by the Contractor's Insurance carrier, the Contractor must request that its carrier send this form to the governmental entity; or
  - b. Form U-26.3 if coverage is provided by the New York State Insurance Fund ("NYSIF"), the Contractor must request that NYSIF send this form to the governmental entity; or
- C. Form SI-12, Certificate of Workers' Compensation Self-Insurance available from the New York State Workers' Compensation Board's Self-Insurance Office; or
- D. For GSI-105.2, Certificate of Participation in Workers' Compensation Group Self-Insurance available from the Contractor's Group Self-Insurance Administrator.

For work performed on a shoreline, or near navigable water (i.e. work in adjoining areas customarily used in the loading, unloading, repairing or building of a vessel), see Chapter 2, Section 13 Marine Protection & Indemnity, Hull & Machinery, Jones Act and United States Longshore & Harbor Workers' Compensation Act Coverage.

#### Disability Benefits Coverage:

New York State WCL Sections 57 and 230 require the heads of all municipal and State entities to ensure that businesses applying for permits, licenses or contracts have appropriate Workers' Compensation and Disability Benefits Insurance coverage. These requirements apply to both original contracts and renewals, whether the governmental entity is having the work done or is simply issuing the permit, license or contract. The additional requirement protects the Agency from potential fiscal responsibility for injuries to uninsured workers. **If implemented, any waiver of this requirement must be approved by the Agency and should only be granted in unique or unusual circumstances (e.g. if all work is done outside of New York State). Evidence of coverage must be provided on the forms specified by the Chair of the New York State Workers' Compensation Board.** It is recommended that waivers be granted only after consultation with the NYS Workers' Compensation Board.

In order to provide proof of compliance with the requirements of the New York State Workers' Compensation Law pertaining to Disability Benefits, a Contractor must:

- A. Be legally exempt from obtaining Disability Benefits coverage; or
- B. Obtain such coverage from an Insurance carrier; or
- C. Be a New York State Workers' Compensation Board approved self-insured employer.

A Contractor seeking to enter into a contract with a municipal or State entity must provide one of the following forms showing proof of coverage or an exemption:

- A. Form CE-200, Certificate of Attestation for New York Entities with No Employees and Certain Out-of-State Entities, That New York State Workers' Compensation and/or Disability Benefits Insurance Coverage is not Required, which is available on the New York State Workers' Compensation Board's website (<http://www.wcb.ny.gov>); or
- B. Form DB-120.1 Certificate of Disability Benefits Insurance. A Contractor must request that its business Insurance carrier send this form to the governmental entity; or
- C. Form DB-155, Certificate of Disability Benefits Self-Insurance. A Contractor must call the New York State Workers' Compensation Board's Self-Insurance Office at 518-402-0247 to obtain this form.

## **BUSINESS AUTOMOBILE LIABILITY**

### ***DESCRIPTION***

The business automobile liability coverage form provides coverage for liability arising out of the ownership, maintenance, or use of automobiles, as well as coverage for Personal Injury protection, and uninsured/underinsured motorists, and includes optional provisions for insuring physical damage to automobiles owned, leased, or hired by the Named Insured. Other automobile coverages, such as auto medical payments, can be added by Endorsement.

Auto physical damage coverage responds to first party property loss exposures, principally the possibility that the occurrence of a particular peril will result in damage that decreases the value of the Named Insured's automobiles. In addition to covering damage to the Named Insured's vehicles, physical damage also responds to cover additional expenses to rent temporary substitute automobiles while the owned automobiles are out of service.

Four physical damage coverages are available under the business automobile coverage form:

- Collisions: Covers loss to a covered automobile and its equipment resulting from collision or overturn;
- Comprehensive: Covers loss to a covered automobile and its equipment resulting from any cause other than collision or overturn, except those losses that are specifically excluded;
- Specified causes of loss: Covers loss to a covered automobile and its equipment resulting from several named perils and

- Towing and labor: Covers towing and at-site labor costs incurred when a covered automobile of the private passenger type is disabled.

Under business automobile liability coverage, the Insurer agrees to pay all sums that the Insured becomes legally obligated to pay as damages and pollution costs covered by the policy. The Insurer also agrees to defend the Insured against suits seeking such damages or costs. These defense costs are payable in addition to the Accident limit. Business automobile coverage is not subject to an Aggregate Limit.

### **Motor Carrier Coverage Form**

When remediation work also includes transportation to an authorized dumpsite, the Motor Carrier Act Endorsement (MCS-90) from the motor carrier policy is required to provide coverage for the transportation of hazardous waste materials. This Insurance is available for any motor carrier, defined as any person or organization providing transportation by auto in the furtherance of a commercial enterprise. The motor carrier form provides liability and physical damage Insurance. The MCS-90 Endorsement affords coverage for all trucks of 10,000 pounds or more gross weight used to transport hazardous material. The Endorsement complies with the provisions of the Motor Carrier Act of 1980.

### ***REQUIREMENT FOR BUSINESS AUTOMOBILE LIABILITY POLICIES***

Business Automobile Liability Insurance is required anytime the activity might involve a vehicle entering Agency property or if a vehicle is used as part of the service or work provided.

If the contract involves removing hazardous waste in connection with the service or work provided, or the service or work involves environmental exposures, pollution liability coverage equivalent to that provided under the ISO Broadened Pollution Liability Coverage for Covered Autos Endorsement (CA 01 12 03 06) shall be provided, and the MCS-90 shall be attached.

### **RAILROAD PROTECTIVE LIABILITY INSURANCE**

#### ***DESCRIPTION***

A railroad owner typically requires Railroad Protective Liability (RPL) Insurance from any Contractor working on, over, under, or adjacent to the railroad owner's property. This type of coverage provides Insurance protecting the railroad owner against liability arising out of the work performed by the Contractor. It serves essentially the same purpose as Owners and Contractors' Protective Liability Insurance but is designed specifically for insuring railroads. The coverage is usually purchased by the Contractor (or the party for whom the Contractor is working), and the railroad owner is the Named Insured.

The RPL coverage form contains two coverage agreements as follows:

- Coverage A applies to bodily injury and property damage liability; and
- Coverage B applies to physical damage to property owned by or leased or entrusted to the railroad.

In both of the above cases, the injury or damage must arise out of acts or omissions at the job site that are related to the work being performed by the Contractor. The coverage applies only to injury or damage that occurs during the policy period.

A unique feature of the RPL policy is that it provides Federal Employers Liability Act (FELA) coverage. FELA provides any employee of an interstate railroad with a right of action against his or her employer for occupational injuries resulting in any part from the employer's negligence. Thus, an RPL policy will cover FELA suits made by employees of the Insured railroad, assuming that the employees' injuries meet all of the other criteria for RPL coverage.

### ***REQUIREMENT FOR RAILROAD PROTECTIVE LIABILITY INSURANCE POLICIES***

RPL Insurance is required whenever work is being done within 50 feet of the tracks or if a railroad employee is assigned to the work. In that case, the following items must be included in the contract:

- Policy must be on an ISO-RIMA or equivalent form approved by the railroad and must meet any other requirements as specified by the railroad and/or the Agency.
- The policy must name the railroad as the Named Insured. No Additional Insureds will be listed on the policy (see requirements for the deletion of the 50' Railroad Exclusion on the Commercial General Liability Insurance policy).
- Evidence of RPL, must be provided in the form of the original policy or a detailed Binder pending issuance of the original policy.
- Definition of "physical damage to property" must be amended to mean direct and accidental loss of or damage to "all property of any Named Insured and all property in any Named Insured's care, custody or control."

## **ENVIRONMENTAL LIABILITY**

### ***DESCRIPTION***

**There are two broad categories of Environmental Liability Insurance.**

- **Environmental Insurance for specific locations/premises**

**This type of Environmental Liability Insurance is called Pollution Legal Liability (PLL) and is often referred to as Site Liability coverage.**

This coverage is intended to benefit business owners who are susceptible to Claims resulting from or related to pollution-related bodily injury or property damage, including natural resource damage that actually or allegedly originated from the property they own(ed), leased or operate(d). Claims can emanate from third parties or result from actions or suits brought by governmental entities/authorities for damages related to abatement, handling, removal, repair, replacement, enclosure, encapsulation, and/or disposal of any pollutants and the need to monitor, clean up, remove, contain, treat or detoxify, or assess the effects of a pollution-related event or condition.

Exposures to loss include, but are not limited to, the products used in, the by-products of, and the emissions or waste produced from, industrial processing and manufacturing, as well as the risks associated with on-site storage of these materials, including the potential migration of pollutants from above or underground storage tanks.

Pollutants include any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals, mold/fungi, asbestos and waste. Waste includes materials to be recycled, reconditioned or reclaimed. Environmental Liability Insurance covers sudden and accidental, as well as gradual discharges.

Pollution Legal Liability Insurance is written on a Claims-Made and reported form.

The coverages available include:

- Bodily injury and property damage;
  - Environmental cleanup costs;
  - Legal defense expense; and
  - By special Endorsement, Professional Liability/Errors and Omissions Liability Insurance.
- **Environmental Insurance for Environmental Remediation Operations**

This type of Environmental Liability Insurance is called Contractor's Pollution Liability (CPL) coverage and is widely available for all types of Contractors. Claims can emanate from third parties or result from actions or suits brought by governmental entities/authorities for damages related to the need to monitor, clean up, remove, contain, treat or detoxify, or assess the effects of a pollution-related event or condition.

The coverage is most appropriate for Contractors working on environmentally sensitive projects such as:

- Environmental remediation;
- Underground storage tank installation/removal;
- Emergency response Contractors;
- Industrial cleaning Contractors;
- Mobile treatment Contractors;
- Biological remediation Contractors;
- Asbestos Abatement;
- Lead Paint Abatement and
- Professional Liability/Errors and Omissions Liability Insurance via Endorsement.

### ***REQUIREMENT FOR ENVIRONMENTAL LIABILITY INSURANCE POLICIES***

Environmental Liability Insurance is required anytime any part of the activity (whether the other party owns, operates, or occupies property or performs contracting operations) that involves pollutants in their operations or the performance of abatement, handling, removal, repair, replacement, enclosure, encapsulation and/or disposal of any pollutants, which include but are not limited to petroleum, petroleum products, hazardous materials or substances including asbestos, lead, fungus and those as defined by applicable State and federal laws and

regulations and the need to monitor, clean up, remove, contain, treat or detoxify, or assess the effects of a pollution-related event or condition. This requirement applies to mold as well, if excluded in the CGL policy.

## **BUILDER'S RISK INSURANCE/INSTALLATION FLOATER**

### ***DESCRIPTION***

#### **Builder's Risk Insurance**

Builder's Risk Insurance covers physical damage to buildings in the course of construction including foundations, additions, attachments and permanent fixtures that constitute a part of the building. This Insurance must be written on a completed value form. Coverage also applies to temporary structures, materials, equipment and supplies pertaining to the construction so long as the property is on the premises or within 100 feet of the premises. The amount of the Insurance must be the anticipated full value of the completed building including permanent fixtures, machinery and equipment. Builder's Risk Insurance coverage ceases when the building is accepted by the owner or put to its intended use.

#### **Installation Floater**

An Installation Floater is designed to cover a Contractor's and/or Agency's interest in certain equipment, materials and supplies that are destined to become part of a structure. For example, coverage is expected to cover a Contractor installing a new elevator or an air conditioning system in an existing building. This floater covers physical damage to the property while it is in storage and between the time it is in transit to the construction site and the time the property is either accepted by the owner or put to its intended use.

### ***REQUIREMENT FOR BUILDER'S RISK INSURANCE/INSTALLATION FLOATER INSURANCE***

Builder's Risk Insurance/Installation Floater Insurance, a form of property Insurance, is required for projects involving construction, whenever specified in the Agency's documents. Coverage can be provided by the Contractor or the Agency.

When required, the Contractor shall provide a Builder's Risk Insurance/Installation Floater Insurance policy in completed value form. Such policy shall cover the total value of the work performed in accordance with the contract, as well as the value of any equipment, supplies and/or materials for the project that may be in storage (on or off the site) or in transit and that are intended to be installed in the project.

Alternatively, when the Agency will provide the coverage, contracts should include provisions for those arrangements.

## **OWNERS AND CONTRACTORS PROTECTIVE**

### ***DESCRIPTION***

This policy is designed to protect either the owner or a Contractor for liability exposures that result from the negligent acts of an independent Contractor or subcontractor, respectively, hired to

perform work on the Insured's behalf. While the subcontractor or independent Contractor purchases the policy, the protection afforded under the policy directly benefits the owner or Contractor for whom the work is being done. This coverage is limited to a specific project and location.

### ***REQUIREMENT FOR OWNERS AND CONTRACTORS PROTECTIVE POLICIES***

Owners and Contractors Protective Liability (OCP) coverage, a form of liability insurance, is required whenever specified by the Agency in accordance with the Agency's policies/procedures and standards. The Contractor shall obtain a separate OCP Policy written on a project basis for the benefit of the Agency, its officers, agents, and employees, and the People of the State of New York. The policy shall be specific to the Contractor's work, including any work performed by subcontractors.

### **PROFESSIONAL LIABILITY INSURANCE/ERRORS AND OMISSIONS LIABILITY INSURANCE**

#### ***DESCRIPTION***

Professional Liability Insurance/Errors and Omissions Liability Insurance can be defined as liability for the failure to use the degree of skill expected of a person in a particular field. Professional liability Insurance/Errors and Omissions Liability Insurance is commonly required from licensed professionals, such as, architects and engineers, lawyers, accountants, Insurance Brokers, financial advisors and other professional service firms, but it may also be required from non-licensed consultants, executive recruiters, graphic designers, translators, travel agents and other professionals that provide advice to an Agency. CGL policies normally add an exclusion eliminating coverage for Professional Liability Insurance/Errors and Omissions Liability Insurance. Thus, the Insured purchases a separate Professional Liability Insurance/Errors and Omissions Liability Insurance policy. These policies may also be referred to as "Errors & Omissions Liability Insurance" policies, as the two terms are often used interchangeably.

There are circumstances when a professional fails to perform contractual obligations as promised and the other party suffers harm as a result. The injured party is entitled to be restored to the position that he or she would have occupied had the contract been performed as promised. Damages for breach of contract are available under a Professional Liability Insurance/Errors and Omissions Liability Insurance policy, which is designed to pay on behalf of an Insured professional that does not meet the standard of care in fulfilling professional obligations. Such coverage is not designed to stand behind all contractual obligations. Unlike other types of Insurance policies, the Professional Liability Insurance/Errors and Omissions Liability Insurance policy does not make payments to the Insured. Instead, the Professional Liability Insurance/Errors and Omissions Liability Insurance policy pays on behalf of the Insured in the event that the Insured's negligence in rendering professional services causes financial loss, damage or injury. Additional Insureds cannot be added to a Professional Liability Insurance/Errors and Omissions Liability Insurance policy since the professional's client usually does not perform professional services and, therefore, does not have the risk that the policy is designed to cover.

In addition to Professional Liability Insurance/Errors and Omissions Liability Insurance for the professionals set forth above, there are other types of Professional Liability Insurance/Errors and Omissions Liability Insurance responding to liability exposures that many businesses face. Examples of these Insurances are employee benefits liability Insurance, fiduciary liability

Insurance, miscellaneous Professional Liability Insurance, and Technology Errors and Omissions Liability Insurance.

### ***REQUIREMENT FOR PROFESSIONAL LIABILITY INSURANCE/ERRORS AND OMISSIONS LIABILITY INSURANCE POLICIES***

Professional Liability Insurance/Errors and Omissions Liability Insurance coverage is required whenever any part of the contracted activity requires the services of a professional consultant. Professional Liability Insurance/Errors and Omissions Liability Insurance provides coverage for financial losses stemming from the errors and/or omissions of the contracted professional in the course of their work. As such, Professional Liability Insurance/Errors and Omissions Liability Insurance coverage is typically required of licensed professionals, such as architects and engineers, lawyers, accountants, Insurance Brokers, financial advisors and other professional service firms, but may also be required from non-licensed consultants that provide advice to an Agency. Contract requirements typically specify that the professional shall provide coverage beyond the term of the contract because of the nature of the Professional Liability Insurance/Errors and Omissions Liability Insurance policy, which is most often written on a Claims-Made basis.

### **DATA BREACH AND PRIVACY LIABILITY INSURANCE (CYBER INSURANCE)**

#### **DESCRIPTION**

#### Data Breach and Privacy Liability Insurance (Cyber Insurance)

Data Breach and Privacy Liability Insurance (Cyber Insurance) policies are intended to cover the Agency's use of technology services and products as well as the owners of the information. The policies may cover liability for security breaches, defamation, and copyright and trademark infringement, as well as losses stemming from computer viruses, identity theft, business interruption, and hacking. In light of the wide scope of cyber risks, it can be difficult to address the range of risks in a single policy. Although some Insurers offer Cyber Liability Insurance coverage via an Endorsement to other types of existing policies (such as CGL policy or a Business Owner Policy), the combination of coverages may not be a good match and Data Breach and Privacy Liability Insurance (Cyber Insurance) policies offer Agencies an option for obtaining coverage. Agencies should perform a risk assessment based upon the scope of the contract and the information that would be involved in the performance of the contract.

The type of coverage that should be required depends on the nature of the operations of the Agency and the level of security the Agency decided to set as its goal. Please note that any organization with access to Personally Identifiable Information ("PII") or Personal Health Information ("PHI") has an exposure to Cyber Liability Claims.

Examples of coverage under Data Breach and Privacy Liability Insurance (Cyber Insurance) policies include:

- Network security coverage, which generally covers liability arising out of security threats of networks, including, for example, transmission of malicious code and Distributed Denial of Service (DDos) Attacks;



- Media liability coverage, which generally covers liability arising out of, for example, infringement of copyright and other intellectual property rights and misappropriation of ideas or media content;
- Information asset coverage, which generally covers an Insured for the cost of recreating, restoring or repairing the Insured's own data or computer systems;
- Network interruption coverage, which generally covers an Insured for its lost revenue due to network interruption or disruptions resulting from DDoS Attacks, malicious code or security threats to networks; and
- Extortion coverage, which generally covers an Insured for the costs of responding to extortion threats to prevent a threatened cyber-attack.

An Additional Insured Endorsement (CY 20 20 01 18) is available for Cyber Liability Policies and should be required by the Agency. Many Insurers that provide Cyber Insurance coverage do not utilize ISO forms, so it's important to review the Insurer's proprietary Additional Insured Endorsement or policy form to determine the scope of coverage. Additional Insured Endorsements should not include exclusions for claims filed by an Additional Insured or limitations on the Additional Insured's ability to file claims for damage to its own system(s).

#### ***REQUIREMENT FOR DATA BREACH AND PRIVACY LIABILITY INSURANCE (CYBER INSURANCE POLICIES)***

**Data Breach and Privacy Liability Insurance (Cyber Insurance):** Contractors are required to maintain during the term of the contract, Data Breach and Privacy Liability Insurance (Cyber Insurance), including coverage for the failure to protect confidential information and failure of the security of the Contractor's computer systems or the Agency's systems due to the actions of the Contractor which results in unauthorized access to the Agency or its data.

Said Insurance shall provide coverage for damages arising from, but not limited to the following:

- Breach of duty to protect the security and confidentiality of nonpublic proprietary corporate information;
- Personally identifiable information (PII) (e.g., medical, financial, or personal in nature in electronic or non-electronic form);
- Privacy notification costs;
- Regulatory defense and penalties;
- Website media liability; and
- Cyber theft of customer's property, including but not limited to money and securities.

If the policy is written on a Claims-Made basis, the Contractor must submit to the Agency an Endorsement providing proof that the policy provides the option to purchase Tail Coverage providing coverage for no less than one (1) year after work is completed in the event that coverage is canceled or not renewed. This requirement applies to both primary and Excess Liability Policies, as applicable.

## **TECHNOLOGY ERRORS AND OMISSIONS LIABILITY**

### ***DESCRIPTION***

#### **Technology Errors and Omissions Liability**

Organizations in the information technology industry have the additional need for Professional Liability Insurance/Errors and Omissions Liability Insurance coverage, commonly referred to as Technology Errors and Omissions Liability coverage. Technology Errors and Omissions Liability coverage covers the providers of technology services and products. Typically, covered services include computer hardware/software consulting, system integration, website design, online services and content including commerce, etc. This type of policy does not allow for the addition of Additional Insureds because it is a type of Professional Liability Insurance/Errors and Omissions Liability Insurance coverage.

Examples of coverage under Technology Error and Omissions Liability policies include:

- Negligence in the provision of:
  - Development and/or design of data systems;
  - Modification of data systems;
  - Consulting services regarding data systems;
  - Manufacturing and/or distribution of data systems; and
  - Licensing and/or sale of technology products.

### ***REQUIREMENT FOR TECHNOLOGY ERRORS AND OMISSIONS LIABILITY***

**Technology Errors and Omissions Liability Insurance:** The Contractor shall maintain, during the term of the contract, Technology Errors and Omissions Liability Insurance for Claims for damages arising from computer related services including, but not limited to, the following: consulting, data processing, programming, system integration, hardware or software development, installation, distribution or maintenance, systems analysis or design, training, staffing or other support services, any electronic equipment, and computer software developed, manufactured, distributed, licensed, marketed or sold.

The policy shall include coverage for third-party fidelity including cyber theft.

If the policy is written on a Claims-Made basis, the Contractor must provide to the Agency proof that the policy provides the option to purchase Tail Coverage providing coverage for no less than one (1) year after work is completed in the event that coverage is canceled or not renewed. This requirement applies to both primary and Excess Liability Policies, as applicable.

## **CRIME INSURANCE**

### ***DESCRIPTION***

This policy is designed to provide several types of crime coverage, such as: employee dishonesty coverage; forgery or alteration; computer fraud; funds transfer fraud; kidnap, ransom, or extortion; money and securities; and money orders and counterfeit money. The coverage benefits the organization who purchases the policy (first-party coverage).

Third-party fidelity extends coverage to an Agency when a Contractor or subcontractor's employee enters the Agency to deliver services and the Contractor or subcontractor's employee is alleged to have committed a theft of Agency property.

### ***REQUIREMENT FOR CRIME POLICIES***

If during the term of the contract, the Contractor or subcontractor plans to enter the premises of an Agency to fulfill its obligations under the contract, the Contractor or subcontractor shall be required to maintain, during the term of the contract, Crime Insurance on a "loss sustained form" or "loss discovered form," and the coverage must include the following:

- The policy must allow for reporting of circumstances or incidents that might give rise to future Claims.
- **Any warranties required by the Contractor or subcontractor's Insurer as a result of the contract must be disclosed and complied with. Said Insurance shall** extend coverage to include the principals (all directors, officers, agents, and employees) of the Contractor and subcontractor as a result of the contract.
- The policy shall include coverage for third-party fidelity and name "The Agency and their officers, agents and employees" as "Loss Payees" for all third-party coverage secured. This requirement applies to both primary and Excess Liability Policies, as applicable.
- The policy shall not contain a condition requiring an arrest and conviction.

The policy shall include coverage for, but is not limited to, employee theft, forgery or alteration, inside the premises-theft of money and securities, inside the premises-robbery or safe burglary of other property, outside the premises computer crime/fraud, and money orders and counterfeit paper currency.

### **MARINE PROTECTION & INDEMNITY, HULL & MACHINERY, JONES ACT, AND UNITED STATES LONGSHORE AND HARBOR WORKERS' COMPENSATION ACT COVERAGE**

#### ***DESCRIPTION***

For those exposures which are water based, a Marine Protection and Indemnity policy covers liability for bodily injury and property damage, similar to the coverage afforded by a CGL policy for operations on the land.

Hull and Machinery coverage protects the vessel's hull and any equipment or machinery onboard the vessel. This policy also provides coverage for any damage sustained by colliding with another vessel.

Standard Workers' Compensation Insurance policies exclude coverage for employees working on a shoreline or near navigable waters (i.e. work in adjoining areas customarily used in the loading, unloading, repairing or building of a vessel). The federal Jones Act and the United States Longshore and Harbor Workers' Compensation Act are intended to fill that gap by requiring Insurance coverage specifically for employees working in that environment. The policies apply to captains, crews, and other workers while they are performing work on or near the water, including work involving loading/unloading, construction, repairs, and work on docks.

### ***REQUIREMENT FOR MARINE PROTECTION & INDEMNITY, HULL AND MACHINERY, JONES ACT AND UNITED STATES LONGSHORE AND HARBOR WORKERS' COMPENSATION ACT POLICIES***

Work conducted on or in connection with navigable water presents special Insurance issues and therefore requires specific Insurance policies. Anytime the contracted activity involves work on or near a shoreline, navigable water, or the work is connected to water related activities (i.e., work in adjoining areas customarily used in the loading, unloading, repairing or building of a vessel), Marine Protection & Indemnity and Hull and Machinery coverage is required. Marine Protection & Indemnity Insurance provides liability Insurance coverage for injuries and/or property damage resulting from the work. Hull & Machinery coverage provides property Insurance for the watercraft or equipment used in the work. Hull & Machinery coverage is primarily for the benefit of the Contractor.

In addition, an Endorsement to the Workers' Compensation policy or the Protection & Indemnity policy providing coverage for all of the Contractor's employees under the Jones Act and the US Longshore and Harbor Workers' Compensation Act will also be required.

## **GARAGE LIABILITY**

### ***DESCRIPTION***

This policy covers automobile dealers, garages, repair shops, parking lot operators, and service stations for Claims of bodily injury and property damage arising out of their business operations. It is similar in nature to a CGL policy but is written specifically for these operations. Any damage to customers' vehicles is excluded and must be secured under a Garage-keeper's Legal Liability policy.

### ***REQUIREMENT FOR GARAGE LIABILITY INSURANCE POLICIES***

Garage Liability Insurance and Garagekeepers Legal Liability coverage, are required anytime:

- a third party is towing, repairing or garaging an Agency's vehicle,
- a third party is leasing an Agency owned parking facility, or
- the Contractor is involved in the garaging business, such as gas stations, repair shops and vehicle storage facilities.

## **EXCESS AND UMBRELLA LIABILITY POLICIES**

### ***DESCRIPTION***

An Excess Liability Policy is designed to provide excess limits of coverage above the limits of the underlying or primary liability coverage. An Excess Liability Policy offers no broader protection than that provided by the underlying coverage and in some instances may be more restrictive. For example, many Excess Liability Policies do not provide defense coverage.

An Umbrella Liability Policy is a type of Excess Liability Policy that not only provides additional limits (as Excess Liability Policies do) but that may also offer coverage not available in the underlying coverages. Most Umbrella Liability Policies also provide defense coverage.

The Excess Liability or Umbrella Liability Policy is generally used to supplement the limits on CGL and Business Automobile Liability policies, to meet the required coverage limits.

**It is important to require the Excess or Umbrella Liability Policy to be written on a “follow form<sup>14</sup>” basis, and to require the policy to provide that the required coverage shall be primary and non-contributory to other Insurance available to the Agency and their officers, agents, and employees<sup>15</sup> and shall not contribute with the Contractor or subcontractor’s Insurance. The Excess Liability or Umbrella Liability Policy for all liability policies required shall waive Subrogation against the Agency and their officers, agents, and employees. This ensures the policy follows the underlying policies for most provisions and there should be no gaps in coverage.**

### ***REQUIREMENTS FOR EXCESS AND UMBRELLA LIABILITY POLICIES***

When the limits of the CGL, Business Automobile Liability, and/or Employers Liability policies procured by the Contractor are insufficient to meet the limits specified in the contract, the Contractor shall procure additional limits via commercial Umbrella Liability and/or Excess Liability policies. The limits of these policies, in combination with those of the primary policies, may be used to satisfy the requirements of the contract.

## **CONSTRUCTION MANAGER’S PROFESSIONAL LIABILITY INSURANCE/ERRORS AND OMISSIONS LIABILITY INSURANCE**

### ***DESCRIPTION***

Many of the services provided by construction managers, including scheduling, contract negotiation and preparation, estimating, and construction supervision, are considered professional services because they require a degree of knowledge, experience, and/or specialization that others outside of the field do not possess. As a result, many CGL Insurance policies now exclude coverage for losses arising from these activities. Construction managers’ Professional Liability Insurance/Errors and Omissions Liability Insurance policies provide coverage for financial losses resulting from these activities.

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<sup>14</sup> To follow form means to follow the underlying policy as to how the provision applies and refers generally to Excess Liability and Umbrella Liability Policies. The policy may stand alone for certain exclusions, conditions, etc., while relating back to the underlying coverage for most provisions. This type of policy form typically applies on top of scheduled underlying Insurance and usually contains a requirement that the Insured maintain scheduled underlying Insurance.

<sup>15</sup> Follow form does not confirm that the Excess Liability Policy or the Umbrella Liability Policy is written on a primary and non-contributory basis.

## ***REQUIREMENTS FOR CONSTRUCTION MANAGER’S PROFESSIONAL LIABILITY INSURANCE/ERRORS AND OMISSIONS LIABILITY INSURANCE POLICIES***

Construction manager’s Professional Liability Insurance/Errors and Omissions Liability Insurance will be required whenever the contracted work includes project management services above and beyond general construction and/or supervision. Such services include scheduling, contract negotiation and preparation, serving as the Owner’s representative, etc., and similar services.

### **UNMANNED AIRCRAFT SYSTEM (“UAS”) LIABILITY INSURANCE**

#### ***DESCRIPTION***

The use of UAS (also known as “Drones”) is more widespread than in years past. UAS can perform certain tasks faster, cheaper or safer (or some combination of these) than they can be done by other methods. For example, some State Agencies are using drones to perform construction inspections of large job sites or buildings. UAS have the capability to enhance natural resource protection, detection of environmental threats and assist with search and rescue through improved flight and sensor capabilities, while providing low-cost surveys and improved flight safety.

Commercial General Liability Insurance policies include an aircraft exclusion that eliminates coverage for UAS exposures. In order to obtain coverage, liability Insurance for UAS can be purchased from an aviation Insurer to cover this exposure.

#### ***REQUIREMENTS FOR UAS LIABILITY INSURANCE POLICIES***

UAS Liability Insurance will be required whenever the contracted work includes operation of an UAS.

In addition to the Insurance coverage described above, procedures for the use of UAS are outlined in Exhibit D of these Guidelines.

### **COMMERCIAL PROPERTY INSURANCE**

#### ***DESCRIPTION***

Commercial Property Insurance is a first-party Insurance that indemnifies the owner, tenant, or user of property for real property damage, or the loss of the property’s income producing ability and associated extra expenses from unforeseen events caused by covered perils. These covered perils would include but are not limited to: fire, lightening, windstorm, hail, explosion, riots, smoke damage, vandalism, theft, and property damage resulting from vehicles, aircraft, failing objects, the weight of ice/snow/sleet, accidental discharge or overflow of water or steam, and certain sudden and accidental losses from tearing, cracking, burning, or bulging, freezing, electrical short circuiting, and volcanic eruption.

The ISO Special Cause of Loss Form (CP 10 30) covers loss from the perils noted, and any other cause of loss unless specifically excluded. Many Insurers utilize proprietary policy forms which are based on the ISO Special Cause of Loss Form (CP 10 30), frequently coupled with proprietary enhancements that further expand the scope of what is covered.

When leasing space to a non-State entity it is important that the tenant insure its physical assets which would provide loss settlement proceeds to pay for repair or replacement of tenant assets that are damaged by a covered cause of loss.

### ***REQUIREMENTS FOR COMMERCIAL PROPERTY INSURANCE***

Such Insurance shall cover the demised premises in an amount not less than the Full Insurable Value of the Demised Premises covering, at a minimum, the perils insured under the ISO Special Causes of Loss Form (CP 10 30)<sup>16</sup>, or the equivalent, including coverage for loss caused by enforcement of ordinances or laws to the extent it is commercially available. Full Insurable Value shall mean the actual replacement cost of the real property (exclusive of the cost of non-insurable portions thereof, such as excavation, foundations and footings). The coverage should include “Equipment Breakdown Coverage,” which used to be and may sometimes still be referred to as “Boiler & Machinery Coverage.” The “Equipment Breakdown Coverage” can be provided as part of a Commercial Property Policy or as a separate standalone placement. Where there is stand-alone placement both policies should contain a joint loss Endorsement.

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<sup>16</sup> The referenced Cause of Loss Form (CP 10 30) contains the following exclusions: Ordinance or Law, Earth Movement, Governmental Action, Nuclear Hazard, Utility Services, War and Military Action, Water, and Fungus, Wet Rot, Dry Rot and Bacteria. As a practical matter, most Commercial Property Insurance policies are written to provide some amount of Ordinance or Law coverage. Earth Movement, Utility Services and coverage for Water (i.e. flood coverage) are attainable in the market and would be provided as an Endorsement to the Commercial Property Insurance policy.

## CHAPTER 3 – MODEL INSURANCE LANGUAGE

### I. INSTRUCTIONS FOR USING MODEL CONTRACT SPECIFICATIONS

This chapter contains model contract language that may be incorporated into Agency contracts and other agreements. The terms have been divided into the basic Insurance requirements, general conditions that are applicable to all contracts, and information that is relative to specific forms of Insurance coverage. Insurance specifications must usually be formulated before the initial procurement (e.g., invitation for bids, or request for proposals) so that prospective Contractors and/or Contractors can build the Insurance costs into their bids or proposals.

In specifying Insurance that is applicable to any type of contracts or specific contracts, the following decisions need to be made by the Agency:

1. **What types of Insurance should be required from the Contractor?** These guidelines provide a list of those types of Insurance coverages that are most frequently required in Agency contracts or other agreements. It is necessary to strike any that do not apply and/or to add to the list when the coverage described herein is not sufficient to cover the activities or risks anticipated. In those cases, consult with the Agency's Insurance Analyst.
2. **What limits of Insurance should be required for the various types of Insurance that are being required?** These guidelines recommend the application of limits based upon the expected contract value for the different types of Insurance listed (see Chapter 4). Higher or lower limits may be substituted to fit Agency preference, or because of particular concerns over a contract's activities or anticipated risks.
3. **Is it appropriate to delete or change the language of the basic Insurance requirement or conditions applicable to the contract or contracts?** Specific language to be included in contracts is recommended by these guidelines. Specific agency or contract considerations may result in the modification or deletion of some of the language in the insuring requirement or the general conditions.

**Does the contract contain other appropriate language relevant to Risk Management?** These guidelines seek to provide guidance about appropriate Insurance requirements. It is absolutely essential however, that contracts for construction, commodities, services, technology, leases, permits, and other agreements also include appropriate Indemnification and/or hold harmless Clauses. Legal counsel should be consulted for the appropriate contract language relative to those requirements.



## **Insuring Requirement**

This first section is the basic Insurance requirement. This language should be used in every contract. However, there may be situations where deviations of the language are necessary. Contact the Agency's Insurance Analyst to discuss deviations.

## **General Conditions**

This second section contains language that pertains to all Insurance coverage the Contractor is required to provide. This language should be used in every contract. However, there may be situations where deviations of the language are necessary. Contact the Agency's Insurance Analyst to discuss deviations.

## **Specific Coverages and Limits**

This third section contains language for each specific type of coverage required. Consideration should be given as to whether each and every type of Insurance that may be included is actually required for the contract being procured. The language provided contains provisions that have been developed by the Council's Insurance Subcommittee in consultation with Insurance industry representatives. The Subcommittee believes that these standards best meet the overall contracting needs of the member Agencies. However, the Subcommittee also recognizes that each Agency faces its own unique operations and contracting needs.

The language required may be slightly different depending on the type of contract being drafted (i.e. contract, license, agreement, entry permit, etc.) and the needs of your Agency. The individual preparing the contract should read the language carefully and, where applicable, select the language that is appropriate for the contract. The limits should be incorporated in the contract based on the requirements from Chapter 4.

***[Note: Whenever language is in parenthesis, bold and italic (like this sentence), selection of language and/or limits is required.]***

## II. MODEL INSURANCE REQUIREMENTS

### **Insuring Requirement**

Prior to the start of work, the Contractor shall procure, at its sole cost and expense, all insurance required by this section. During the term of the contract, and any renewal or extensions thereof, the Contractor shall maintain in force, at its sole cost and expense, policies of Insurance as required by this section. All Insurance required by this section shall be written by companies that have an A.M. Best Company rating of “A-” Class “VII” or better. In addition, companies writing insurance intended to comply with the requirements of this section should be licensed or authorized by the New York State Department of Financial Services to issue Insurance in the State of New York. The Agency may, at its sole discretion, accept policies of Insurance written by a non-authorized carrier or carriers when Certificates and/or other policy documentation are accompanied by a completed Excess Lines Association of New York (ELANY) Affidavit or other documents demonstrating the company’s strong financial rating. If during the term of a policy, the carrier’s A.M. Best rating falls below “A-,” Class “VII,” the Insurance must be replaced, on or before the renewal date of the policy with Insurance that meets the requirements above.

The Contractor shall deliver to the Agency evidence of the Insurance required by this section in a form acceptable to the Agency. Policies must be written in accordance with the requirements of the paragraphs below, as applicable. Acceptance and/or approval by the Agency does not, and shall not be construed to, relieve the Contractor of any obligations, responsibilities, or liabilities under the contract.

The Contractor shall not take any action or omit to take any action that would suspend or invalidate any of the required coverages during the term of the contract, and any extension or holdover thereof.

### **General Conditions**

**A. *Conditions Applicable to Insurance.*** All policies of Insurance required by this section must comply with the following requirements:

- 1. *Coverage Types and Policy Limits.*** The types of coverage and policy limits required from the Contractor are specified below in Paragraph B Insurance Requirements.
- 2. *Policy Forms.*** Except as otherwise specifically provided herein, or agreed to in writing by the Agency, all policies of Insurance required by this section shall be written on an Occurrence basis. Under certain circumstances, the Agency may elect to accept policies written on a Claims-Made basis provided that, at a minimum, the policy remains in force throughout the performance of the services and for three (3) years after completion of the contract. If the policy is cancelled or not renewed during that time, the Contractor must purchase, at its sole expense, Tail Coverage sufficient to cover the 3-year period after completion of the contract. Written proof of this extended reporting period must be provided to the Agency prior to the policy’s expiration or cancellation.
- 3. *Certificates of Insurance/Notices.*** The Contractor shall provide a Certificate or Certificates of Insurance, in a form satisfactory to the Agency (i.e., an ACORD Certificate), before commencing any work under the contract, and thereafter, pursuant to the timelines set

forth in Section A.13 below. Certificates shall reference the contract number and shall name the Agency as the Certificate holder. Certificates shall be mailed to the:

Name of Agency Contract Administrator, Title  
Name of Agency  
Office Location  
Address  
City, State Zip

Certificates of Insurance shall:

- a. Be in the form acceptable to the Agency and in accordance with the New York State Insurance Law (i.e.: an ACORD Certificate);
- b. Disclose any Deductible, Self-Insured Retention, Aggregate Limit or any exclusion to the policy that materially changes the coverage required by the contract;
- c. Refer to the contract by number;
- d. Be signed by an authorized representative of the Insurance carriers; and
- e. Contain the following language in the Description of Operations/Locations/Vehicles section: Additional Insured protection afforded is on a primary and non-contributory basis. A waiver of subrogation is granted in favor of the Additional Insureds.

Only original documents (Certificate(s) and any Endorsements or other attachments) or electronic versions of the same that can be directly traced back to the Insurer, Agent or Broker via e-mail distribution or similar means will be accepted.<sup>17</sup>

The Agency has not requested that the Contractor submit copies of its entire Insurance policies. Generally, the Agency only requests specific documentation regarding proof of Insurance coverage, such as Certificates and Endorsements. The Contractor is asked to refrain from submitting entire Insurance policies, unless specifically requested by the Agency. If an entire Insurance policy is submitted but not requested, the Agency shall not be obligated to review and shall not be chargeable with knowledge of its contents. In addition, submission of an entire Insurance policy not requested by the Agency does not constitute proof of compliance with the Insurance requirements and does not discharge the Contractor from submitting the Insurance documentation required by this section.

**4. Primary Coverage.** All liability Insurance policies shall provide that the required coverage shall be primary and non-contributory to other Insurance available to the Agency. Any other Insurance maintained by the Agency shall be excess of and shall not contribute with the Contractor's Insurance.

**5. Breach for Lack of Proof of Coverage.** The term of the contract shall not commence if the coverage provisions and limits of the policies provided by the Contractor do not meet the

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<sup>17</sup> Each Agency must determine on its own if electronic forms, faxes, or copies will be accepted and under what circumstances. The instructions above should be edited to accurately reflect the Agency's policy. That said, the Insurance Subcommittee recommends that Agencies accept electronic forms as original documents when the document can be directly traced back to the Insurance Carrier, Agent, or Broker via e-mail distribution or similar means.

provisions and requirements of this section or proof of compliance is not provided to the Agency. In addition, the failure to comply with the requirements of this section at any time during the term of the contract, and any extension or holdover thereof, shall be considered a breach of the terms of the contract and shall allow the Agency to avail itself of all remedies available under the contract, at law or in equity.

**6. *Self-Insured Retention/Deductibles.*** Certificates of Insurance must indicate the applicable Deductibles or Self-Insured Retentions for each listed policy. Deductibles or Self-Insured Retentions above \$100,000.00 are subject to approval from the Agency. Such approval shall not be unreasonably withheld, conditioned, or delayed. The Contractor shall be solely responsible for all Claim expenses and loss payments within the Deductible or Self-Insured Retentions. If the Contractor is providing the required Insurance through Self-Insurance, evidence of the financial capacity to support the Self-Insurance program along with a description of that program, including, but not limited to, information regarding the use of a third-party administrator shall be provided upon request.

**7. *Subcontractors.*** Prior to the commencement of any work by a subcontractor, the Contractor shall require such subcontractor to procure policies of Insurance that comply with the requirements of this section and maintain the same in force during the term of any work performed by that subcontractor. An Additional Insured Endorsement CG 20 38 12 19 (or the equivalent) evidencing such coverage shall be provided to the Contractor prior to the commencement of any work by a subcontractor, pursuant to the timelines set forth in Section A.13. below, as applicable, and to the Agency upon request. For subcontractors that are Self-Insured, the subcontractor shall be obligated to defend and Indemnify the above-named Additional Insureds with respect to Commercial General Liability and Business Automobile Liability, in the same manner that the subcontractor would have been required to pursuant to this section had the subcontractor obtained such Insurance policies.

**8. *Waiver of Subrogation.*** The Contractor shall cause to be included in its policies insuring against loss, damage or destruction by fire or other insured casualty a waiver of the Contractor's right of Subrogation against The People of the State of New York, The (*insert Agency's name*) and their officers, agents, and employees, or, if such waiver is unobtainable provide one of the following to the Agency prior to the commencement of the Contract: (i) an express agreement that such policy shall not be invalidated if the Contractor waives or has waived before the casualty, the right of recovery against The People of the State of New York and The (*insert Agency's name*) and their officers, agents, and employees or (ii) any other form of permission for the release of The People of the State of New York and The (*insert Agency's name*) and their officers, agents, and employees. A Waiver of Subrogation Endorsement shall be provided upon request. A blanket Waiver of Subrogation Endorsement evidencing such coverage is also acceptable.

**9. *Additional Insured.*** The Contractor shall cause to be included in each of the liability policies required below, ISO form CG 20 10 11 85 (or a form or forms that provide equivalent coverage, such as the combination of the CG 20 10 12 19 and CG 20 37 12 19) and form CA 20 48 10 13 (or a form or forms that provide equivalent coverage), naming as Additional Insureds: The People of the State of New York, The (*insert Agency's name*) and their officers, agents, and employees. An Additional Insured Endorsement evidencing such coverage shall be provided to the Agency prior to the commencement of the contract and pursuant to the timelines set forth in Section A.13. below. A blanket Additional Insured Endorsement CG 20 38 12 19 (or the equivalent) evidencing such coverage is also acceptable. For Contractors that

are Self-Insured, the Contractor shall be obligated to defend and Indemnify the above-named Additional Insureds with respect to Commercial General Liability and Business Automobile Liability, in the same manner that the Contractor would have been required to pursuant to this section had the Contractor obtained such Insurance policies.

**10. Excess/Umbrella Liability Policies.** Required Insurance coverage limits may be provided through a combination of primary and Excess Liability and Umbrella Liability policies. If coverage limits are provided through Excess Liability and Umbrella Liability policies, then a Schedule of Underlying Insurance listing policy information for all underlying Insurance policies (Insurer, policy number, policy term, coverage and limits of Insurance), including proof that the Excess Liability and Umbrella Liability Insurance follows form, must be provided upon request.

**11. Notice of Cancellation or Non-Renewal.** Policies shall be written so as to include the requirements for notice of cancellation or non-renewal in accordance with the New York State Insurance Law. Within five (5) business days of receipt of any notice of cancellation or non-renewal of Insurance, the Contractor shall provide the Agency with a copy of any such notice received from an Insurer together with proof of replacement coverage that complies with the requirements of this section.

**12. Policy Renewal/Expiration.** Upon policy renewal/expiration, evidence of renewal or replacement of coverage that complies with the requirements of this section shall be delivered to the Agency. If, at any time during the term of the contract, and any extension or holdover thereof, the coverage provisions and limits of the policies required herein do not meet the provisions and limits set forth in this section, or proof thereof is not provided to the Agency shall have the right to avail themselves of all remedies available under the contract, at law or in equity.

**13. Deadlines for Providing Insurance Documents after Renewal or Upon Request.** As set forth herein, certain Insurance documents must be provided to the Agency after renewal or upon request. This requirement means that the Contractor shall provide the applicable Insurance document to the Agency as soon as possible but in no event later than the following time periods:

- For Certificates of Insurance: five (5) business days from request or renewal, whichever is later;
- For information on Self-Insurance or Self-Insured Retention programs: fifteen (15) calendar days from request or renewal, whichever is later;
- For other requested documentation evidencing coverage: fifteen (15) calendar days from request or renewal, whichever is later;
- For Additional Insured and waiver of Subrogation endorsements: thirty (30) calendar days from request or renewal, whichever is later; and
- For notice of cancellation or non-renewal and proof of replacement coverage that complies with the requirements of this section: five (5) business days from request or renewal, whichever is later.

Notwithstanding the foregoing, if the Contractor shall have promptly requested the Insurance documents from its Broker or Insurer and shall have thereafter diligently taken all steps necessary to obtain such documents from its Insurer and submit them to the Agency, the

Agency shall extend the time periods set forth above for a reasonable period, that shall in no event exceed thirty (30) calendar days from request or renewal, whichever is later.

## **Specific Coverages Table of Contents**

The specific coverages are listed in the following order:

1. Commercial General Liability
2. Workers' Compensation
3. Disability Benefits Coverage
4. Business Automobile Liability
5. Railroad Protective Liability Insurance
6. Environmental Liability Insurance
7. Builder's Risk Insurance/Installation Floater
8. Owners and Contractors Protective
9. Professional Liability Insurance/Errors and Omissions Liability Insurance
10. Data Breach and Privacy Liability Insurance (Cyber Insurance)
11. Technology Errors and Omissions Liability
12. Crime Insurance
13. Marine Protection & Indemnity, Hull & Machinery, Jones Act and United States Longshore and Harbor Workers' Compensation Act Coverage
14. Garage Liability Insurance
15. Excess and Umbrella Liability
16. Construction Manager's Professional Liability Insurance/Errors and Omissions Liability Insurance
17. Unmanned Aircraft System ("UAS") Liability
18. Commercial Property Insurance

### **B. Specific Coverages and Limits**

The types of Insurance and minimum policy limits shall be as follows:

#### **1. Commercial General Liability**

Commercial General Liability Insurance, (CGL) covering the liability of the Contractor for bodily injury, property damage, and Personal and Advertising Injury arising from all work and operations under the contract, using form CG 00 01 or a policy providing equivalent coverage. The limits under such policy shall not be less than the following:

- Each Occurrence limit - as specified in Column C of the matrices (See Chapter 4)
- General Aggregate – as specified in Column D of the matrices (See Chapter 4)

- Products/Completed Operations - should equal the “General Aggregate” limit
- Personal and Advertising Injury – \$1,000,000
- Damage to Rented Premises - \$50,000
- Medical Expense – \$5,000

Coverage shall include, but not be limited to, the following:

- premises liability;
- independent Contractors/subcontractors;
- blanket contractual liability, including tort liability of another assumed in a contract;
- defense and/or indemnification obligations, including obligations assumed under the contract;
- cross liability for Additional Insureds;
- Products/Completed Operations for a term of no less than 3 years, commencing upon acceptance of the work, as required by the contract;
- explosion, collapse, and underground hazards,
- Contractor means and methods; and
- liability resulting from Section 240 or Section 241 of the New York State Labor Law.<sup>18</sup>

Limits may be provided through a combination of primary and Umbrella Liability/Excess Liability policies. The CGL aggregate shall be endorsed to apply on a per project basis for construction contracts.<sup>19</sup>

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<sup>18</sup> This coverage is applicable for contracts involving the erection, demolition, repairing, altering, painting, cleaning or pointing of a building or structure.

<sup>19</sup> The 2013 Additional Insured edition dates (i.e. CG 20 10 04 13 or CG 20 38 04 13; CG 20 37 04 13 and form CA 20 48 10 13; and their equivalents) rely on the Insurance requirements contained in the contract between the parties, not the Insurance policies themselves, as the basis for determining how the Commercial General Liability Insurance (“CGL”) policy limits of Insurance will apply to the Additional Insured. Insurance limit gaps can occur in situations in which a downstream party is required to provide Additional Insured status to an upstream party, where the downstream party’s limits of Insurance exceed the governing contract’s limit of Insurance requirements.

The CG 2010 04/13, for example (and many equivalent, proprietary forms which may include similar language), contains a provision that states – emphasis added:

"C. With respect to the insurance afforded to these Additional Insureds, the following is added to Section III - Limits Of Insurance:

If coverage provided to the Additional Insured is required by a contract or agreement, the most we will pay on behalf of the Additional Insured is the amount of insurance:

1. Required by the contract or agreement; or
2. Available under the applicable Limits of Insurance shown in the Declarations; whichever is less.”

The Additional Insured could be exposed to a limits gap in scenarios in which the downstream party’s limit of liability exceeds the contract’s specific limit requirements.

Policies shall name (*insert Agency's name*) as Additional Insureds<sup>20</sup>, and such coverage shall be extended to afford Additional Insured status to those entities during the Products/Completed Operations term.

The CGL policy, and any Umbrella Liability/Excess Liability policies used to meet the “Each Occurrence” limits specified above, must be endorsed to be primary with respect to the coverage afforded the Additional Insureds, and such polic(ies) shall be primary to, and non-contributing with, any other Insurance maintained by the Agency. Any other Insurance maintained by the Agency shall be excess of and shall not contribute with the Contractor’s or subcontractor’s Insurance, regardless of the “Other Insurance” clause contained in either party’s policy (ies) of Insurance, if applicable.

When the work involves construction or demolition within 50 feet of rail stations, yards, tracks, or other railroad property, the exclusion for work done within 50 feet of railroad property (the “Railroad” exclusion) must be deleted. Also, See requirements for Railroad Protective Liability Insurance.

## **2. Workers’ Compensation**

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For example:

If the contract requirement for limits of Insurance are not in sync with a downstream party’s policy limits, the downstream party’s Insurer(s) may not be obligated to provide coverage for the benefit of the Additional Insured beyond the contract’s limit requirement.

An Agency, as the Additional Insured; for example, might stipulate in its contract that the downstream party provide \$1 Million in primary CGL coverage and \$5 Million in Excess/Umbrella limits of Insurance. In a situation where the downstream party has \$2 Million primary CGL and \$4 Million Excess/Umbrella limits of Insurance, the Excess/Umbrella coverage will not come into play until the primary \$2 Million of underlying CGL coverage is exhausted.

Should a loss exceed \$1 Million, however, should it be less than \$2 Million (i.e. the downstream party’s primary CGL limit of Insurance), because the contract requires the downstream party to only provide the Additional Insured with \$1 million in primary coverage, the downstream party’s primary CGL Insurer will not respond to any loss amount in excess of \$1 Million, owing to the fact that its obligations, which are governed by the contract, cease at \$1 Million limit of Insurance (i.e. “whichever is less”).

For a loss that exceeds \$2 Million, this means that the Additional Insured coverage will never reach the \$2 million required for the Excess/Umbrella Liability Policy to come into play. The downstream party’s Excess/Umbrella Insurer would contend that it has no obligation to provide its Excess/Umbrella limits for the benefit of the Additional Insured because the Additional Insured, owing to the contract’s limit requirement, would never exhaust its \$2 million in primary CGL coverage in order to trigger coverage in excess of the primary CGL limit of Insurance because the Insurer’s obligation is capped by the lower limit of Insurance requirement contained in the contract (i.e. the primary CGL limit of Insurance).

It’s important, therefore, that contracts contain specific language which stipulates that limits of Insurance for Automobile Liability, Commercial General Liability Insurance and Excess/Umbrella Liability Policies may be satisfied “in any combination of primary and Excess/Umbrella Liability limits of Insurance.”

<sup>20</sup> Consideration should be given to who should be named as Additional Insureds, as the appropriate parties to be named will differ depending on the contract. For example, sometimes naming only The People of the State of New York, its officers and employees will not be sufficient and specific Agencies will also need to be named.



For work to be performed in New York State, the Contractor shall provide and maintain full New York State (NYS listed in item 3a of the policy's Information Page) coverage during the life of the contract for the benefit of such employees as are required to be covered by the New York State Workers' Compensation Law.

If the contract involves work on or near a shoreline, or navigable waters (i.e. work in adjoining areas customarily used in the loading, unloading, repairing, or building of a vessel), a U.S. Longshore and Harbor Workers' Compensation Act and/or Jones Acts policy as applicable must be provided. Any waiver of this requirement must be approved by the Agency and will only be granted in unique or unusual circumstances.

Evidence of Workers' Compensation and Employers Liability coverage must be provided on one of the following forms specified by the Chair of the New York State Workers' Compensation Board:

- (1) C-105.2 (September 2007, or most current version) – Certificate of Workers' Compensation Insurance
- (2) U-26.3 – Certificate of Workers' Compensation Insurance from the State Insurance Fund
- (3) GSI-105/SI-12 – Certificate of Workers' Compensation Self-Insurance.
- (4) CE-200 – Attestation of Exemption – When Contractor meets the requirements.

All forms are valid for one year from the date the form is signed/ stamped, or until policy expiration, whichever is earlier.

### **3. Disability Benefits**

For work to be performed in New York State, the Contractor shall provide and maintain coverage during the life of the contract for the benefit of such employees as are required to be covered by the New York State Disability Benefits Law. Any waiver of this requirement must be approved by the Agency and will only be granted in unique or unusual circumstances.

Evidence of Disability Benefits coverage must be provided on one of the following forms specified by the Chair of the Workers' Compensation Board:

- (1) DB-120.1(May 2006 or most current version) – Certificate of Insurance Coverage under the New York State Disability Benefits Law;
- (2) DB-155 – Certificate of Disability Self-Insurance; or
- (3) CE-200 – Certificate of Attestation of Exemption.

All forms are valid for one year from the date the form is signed/ stamped, or until policy expiration, whichever is earlier

### **4. Commercial Automobile Liability**

Commercial Auto Liability Insurance covering liability arising out of the use of any motor vehicle in connection with the contract, including owned, leased, hired and non-owned vehicles bearing or, under the circumstances under which they are being used, required by the Motor Vehicle Laws of the State of New York to bear, license plates. Such policy shall have a combined single limit

for Bodily Injury and Property Damage of at least one million dollars<sup>21</sup> and shall name (XXXXXX) as Additional Insured<sup>22</sup>. The limits may be provided through a combination of primary and Umbrella/Excess liability policies. If the contract involves the removal of hazardous waste or otherwise transporting hazardous materials, pollution liability coverage for covered automobiles shall be provided by form CA 01 12 03 06 and the Motor Carrier Act Endorsement (MCS-90) shall be attached.

## **5. Railroad Protective Liability Insurance**

In the event that any work under the contract is to be performed on or within 50 ft. of railroad property or a railroad right-of-way, the Contractor shall provide and maintain a Railroad Protective Liability (RPL) Insurance Policy in the amounts required by the respective railroad.

The policy must name the Railroad as the Named Insured. No Additional Insureds can be listed on the policy (see requirements for the deletion of the 50' Railroad Exclusion on the Commercial General Liability policy), and the definition of "physical damage to property" must be amended to mean direct and accidental loss of or damage to "all property of any Named Insured and all property in any Named Insured's care, custody or control."

Evidence of Railroad Protective Liability Insurance must be provided on the Certificate of Insurance, and a detailed Binder pending issuance of the policy, or on an ISO-RIMA or equivalent form approved by the railroad, and meet any other requirements as specified by the railroad and or the Agency.

## **6. Environmental Liability**

### **Pollution Legal Liability (PLL)**

If the operations of the other party (i.e., a tenant) are such that they could be found liable for damages that result from the release of pollutants, including Claims of bodily injury, property damage or environmental contamination including natural resource damage from the property they owned, leased, or operated, then they shall provide and maintain Pollution Legal Liability coverage with limits not less than \$x,xxx,xxx per Claim.

### **Contractor's Pollution Liability (CPL)**

If the contract involves abatement, handling, removal, repair, replacement, enclosure, encapsulation and/or disposal of any pollutants, which includes but are not limited to, petroleum, petroleum product, hazardous materials or substances including asbestos, lead, fungus and those as defined by applicable State and federal laws and regulations, and the need to monitor, clean up, remove, contain, treat, detoxify, or assess the effects of a pollution-related event or condition the Contractor shall procure, or otherwise obtain through an approved subcontractor, and maintain in full force and effect throughout the term of the contract, and for two years after completion hereof,

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<sup>21</sup> There is no discretion to go below \$1 million dollars with this coverage because of the Federal Motor Carrier Safety Regulations.

<sup>22</sup> Consideration should be given to who should be named as Additional Insureds, as the appropriate parties to be named will differ depending on the contract. For example, sometimes naming only The People of the State of New York, its officers and employees will not be sufficient and specific Agencies will also need to be named.

Contractor's Pollution Liability Insurance, including coverage for non-owned disposal sites, with limits of not less than (*as specified by the applicable matrix*), providing coverage for bodily injury and property damage, including loss of use of damaged property or of property that has not been physically injured. Such policy shall provide coverage for actual, alleged or threatened emission, discharge, dispersal, seepage, release or escape of pollutants, including any loss, cost or expense incurred as a result of any cleanup of pollutants or in the investigation, settlement or defense of any Claim, suit, or proceedings against the Agency arising from the Contractor's work. The People of the State of New York and the Agency shall be named as Additional Insureds and coverage shall be primary.

This requirement applies to mold as well, if excluded in the Commercial General Liability Insurance policy.

If automobiles are to be used for transporting hazardous materials, the Contractor shall provide pollution liability broadened coverage for covered automobiles (Endorsement CA 01 12 or its equivalent) as well as proof of MCS-90.

## **7. Builder's Risk Insurance**

**[The following language is to be used when the Contractor is required to provide Builder's Risk Insurance]**

### **Builder's Risk Insurance- Contractor**

The Contractor shall provide a Builder's Risk Insurance policy in completed value form. Such policy shall cover the total value of the work performed in accordance with the contract, as well as the value of any equipment, supplies and/or material to be installed in the project that may be in storage (on or off the site) or in transit. The policy shall cover the cost of removing debris, including demolition as may be legally necessary by the operation of any law, ordinance or regulation, and property of the State held in its care, custody and/or control. Such policy shall name as Insureds the People of the State of New York, the Contractor, and the [AGENCY]. The Builder's Risk Insurance policy shall contain Endorsements that provide for the following:

- The State and the Contractor shall be named as Loss Payees for the work in order of precedence, as their interest may appear; and
- In the event the loss occurs at an occupied facility, the policy shall permit occupancy without the consent of the Insurance company; and
- In the event that the Insurance policy has been issued by a mutual Insurance company, the following language shall be included: the "(Agency) is not liable for any premium or assessment under this policy of Insurance. The First Named Insured is solely liable therefor."

**[The following contract language is to be used when the Owner or Agency will provide Builder's Risk Insurance coverage]**

### **Builder's Risk Insurance- Owner/Agency**

The Agency shall, except as otherwise specified, at all times during the period of construction and until physical completion and acceptance, procure and maintain, at the cost and expense of the Owner, Builder's Risk Insurance. The Contractors and Subcontractors will be covered for their

work. Losses up to and including (\$XXX) shall be borne by the Contractor. Reimbursement of loss, if any, is to be made payable to the owner. The Agency shall, at the owner's sole discretion, have power to adjust and to settle with the Insurer any loss or Claim under said Insurance. Coverage shall include sub-limits for property in transit and for property in storage on and off the job site.

### **Contractor's Equipment**

The Contractor shall secure, pay for, and maintain Commercial Property Insurance necessary for protection against the loss of owned, borrowed or rented capital equipment and tools, including any tools owned by employees, and any tools or equipment, staging towers, and forms owned, borrowed or rented by the Contractor. The requirement to secure and maintain such Insurance is solely for the benefit of the Contractor. Failure of the Contractor to secure such Insurance or to maintain adequate levels of coverage shall not render the Additional Insureds or their agents and employees responsible for any losses; and the Additional Insureds, their agents and employees shall have no such Liability.

### **8. Owners and Contractors Protective**

The Contractor shall obtain a separate Owners/Contractors Protective Liability (OCP) Policy as follows:

- For work related to street, road, highway, and/or bridge work – Form CG 00 14, Special Protective and Highway Liability Policy – New York Department of Transportation
- For projects not related to street, road, highway, and/or bridge work – Form CG 00 09, Owners and Contractors Protective Liability Coverage form – Coverage for Operations of the Designated Contractor

The policy shall be written on a project basis for the benefit of the Agency, its officers, agents, and employees, and the People of the State of New York, with respect to all operations under the contract by the Contractor or its subcontractors, including in such coverage any omissions and supervisory acts of the Agency, its officers, agents, and employees.

The Agency shall be the Named Insured in the OCP Policy, which shall be promptly furnished to the Agency. OCP policy limits shall be no less than: (*as specified in the applicable matrix*).

### **9. Professional Liability Insurance/Errors and Omissions Liability Insurance**

The Contractor and any subcontractor retained by the Contractor to work on the contract shall procure and maintain during and for a period of three (3) years after completion of the contract, Professional Liability Insurance/Errors and Omissions Liability Insurance in the amount of (*refer to the applicable matrix*) issued to and covering damage for liability imposed on the Contractor by the contract or law arising out of any negligent act, error, or omission in the rendering of or failure to render professional services required by the contract. The Professional Liability Insurance/Errors and Omissions Liability Insurance may be issued on a Claims-Made Policy form, in which case the Contractor shall purchase, at its sole expense, Tail Coverage of up to three (3) years after work is completed if coverage is cancelled or not renewed.

If applicable, the Contractor shall provide coverage for its' negligent act, error or omission in rendering or failing to render professional services required by the contract arising out of specifications, installation, modification, abatement, replacement or approval of products, materials or processes containing pollutants, and the failure to advise of or detect the existence or the proportions of pollutants.

#### **10. Data Breach and Privacy Liability Insurance (Cyber Insurance)**

The Contractor shall maintain, during the term of the contract, Data Breach and Privacy Liability Insurance (Cyber Insurance) including coverage for failure to protect confidential information and failure of the security of the Contractor's computer systems or the Agency's systems due to the actions of the Contractor which results in unauthorized access to the Agency or its data. The Contractor shall carry and maintain applicable coverage as specified in Column G of the Procurement/Services/Commodities Matrix (see Chapter 4).

Said Insurance shall provide coverage for damages arising from, but not limited to the following:

- Breach of duty to protect the security and confidentiality of nonpublic proprietary corporate information;
- Personally identifiable nonpublic information (e.g., medical, financial, or personal in nature in electronic or non-electronic form);
- Privacy notification costs;
- Regulatory defense and penalties;
- Website media liability; and
- Cyber theft of customer's property, including but not limited to data, PII, money and securities.

If the policy is written on a Claims-Made basis, the Contractor must provide to the **[Agency]** proof that the policy provides the option to purchase Tail Coverage providing coverage for no less than one (1) year after work is completed in the event that coverage is canceled or not renewed. This requirement applies to both primary and Excess Liability Policies, as applicable.<sup>23</sup>

#### **11. Technology Errors and Omissions Liability**

The Contractor shall maintain, during the term of the contract, Technology Errors and Omissions Liability Insurance for Claims for damages arising from computer related services including, but not limited to, the following: consulting, data processing, programming, system integration, hardware or software development, installation, distribution or maintenance, systems analysis or design, training, staffing or other support services, any electronic equipment, or computer software developed, manufactured, distributed, licensed, marketed or sold.

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<sup>23</sup> It is important to remember for this line of coverage that no two policies are identical and terminology can be confusing. Due to this fact and the potential risks including security, privacy, media/content, and regulatory actions, consultation with your respective Insurance Analyst and Legal counsel is recommended.

The policy shall include coverage for third-party fidelity including cyber theft, if applicable.

If the policy is written on a Claims-Made made basis, the Contractor must provide to the Agency proof that the policy provides the option to purchase Tail Coverage providing coverage for no less than one (1) year after work is completed in the event that coverage is canceled or not renewed. This requirement applies to both primary and Excess Liability Policies, as applicable.

## **12. Crime Insurance**

Crime Insurance, on “loss sustained form” or a “loss discovered form” providing coverage for third-party fidelity in an amount not less than *[\$XXX]*, including coverage for:

- Employee Theft;
- Forgery or Alteration;
- Inside the Premises - Theft of Money and Securities;
- Inside the Premises- Robbery or Safe Burglary of Other Property;
- Outside the Premises;
- Computer Fraud; and
- Money Orders and Counterfeit Paper Currency.

Policy must allow for reporting of circumstances or incidents that might give rise to future Claims.

The Agency, including its affiliates and subsidiaries, must be included as “Loss Payees” as respects this specific amount as their interests may appear.

Any warranties required by the Insurer must be disclosed and complied with. Said Insurance shall extend coverage to include the principals of the Contractor and subcontractor as a result of the contract.

This policy shall not contain a condition requiring an arrest and conviction.

## **13. Marine Protection & Indemnity, Hull & Machinery, Jones Act and United States Longshore and Harbor Workers’ Act Coverage**

Anytime the activity involves work on or near a shoreline, navigable water (i.e. work in adjoining areas customarily used in the loading, unloading, repairing or building of a vessel) or the work is connected to water related activities, Marine Protection & Indemnity and Hull and Machinery coverage is required. Hull and Machinery coverage shall be provided for the total value of the watercraft or equipment. The Contractor shall obtain Protective and Indemnity Liability Insurance for all marine operations under the contract, with a minimum (\$ XXXX) limit. Policies shall name (XXXXXX) as Additional Insureds.<sup>24</sup>

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<sup>24</sup> Consideration should be given to who should be named as Additional Insureds, as the appropriate parties to be named will differ depending on the contract. For example, sometimes naming only The People of the State of New York, its officers and employees will not be sufficient and specific Agencies will also need to be named.

#### **14. Garage Liability Insurance**

Garage Liability Insurance shall be written on the current edition of ISO occurrence form CA 00 05, or a substitute form providing equivalent coverage, including Garagekeepers Legal Liability coverage, is required anytime:

- a third party is towing, repairing or garaging an Agency vehicle,
- a third party is leasing an Agency owned parking facility, or
- the Contractor is involved in the garaging business, such as gas stations, repair shops, vehicle storage facilities, and parking lots.

The policy shall include coverage for all garage operations of the Contractor, including premises and operations; Products/Completed Operations, and Garagekeepers Legal Liability coverage with minimum limits of:

- Garage Liability Insurance: \$1,000,000 for garage operations
- Garagekeepers Legal Liability: \$100,000 per vehicle in custody, \$500,000 aggregate on a direct primary basis.

Policies shall name (XXXXXX) as Additional Insureds.<sup>25</sup>

#### **15. Umbrella and Excess Liability Policies**

When the limits of the CGL, Auto, and/or Employers' Liability policies procured are insufficient to meet the limits specified, the Contractor shall procure and maintain commercial Umbrella and/or Excess Liability policies with limits in excess of the primary; provided, however, that the total amount of Insurance coverage is at least equal to the requirements set forth above. Such policies shall provide coverage at least as broad as the underlying policies. Any Insurance maintained by the Agency or any Additional Insured shall be considered excess of and shall not contribute with any other Insurance procured and maintained by the Contractor including primary, Umbrella and Excess Liability Policies regardless of the other Insurance clause contained in either parties' policy.

#### **16. Construction Manager's Professional Liability Insurance/Errors and Omissions Liability Insurance**

Construction Manager's Professional Liability Insurance will be required whenever the contracted work includes project management services above and beyond general construction and/or supervision. Such services include scheduling, contract negotiation and preparation, serving as the Owner's representative, etc., and similar services.

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<sup>25</sup> Consideration should be given to who should be named as Additional Insureds, as the appropriate parties to be named will differ depending on the contract. For example, sometimes naming only The People of the State of New York, its officers and employees will not be sufficient and specific Agencies will also need to be named.

## **17. Unmanned Aircraft Systems (“UAS”) Liability:**

UAS Liability will be required whenever the contracted work includes operation of an UAS. The Contractor and/or its subcontractor shall provide an Aviation Liability Insurance policy covering the liability of the operator for bodily injury, property damage and Personal Injury arising from all operation in the amount of \$1,000,000.00 per Occurrence.<sup>26</sup> A Certificate of Insurance demonstrating proof of coverage must be submitted along with the documentation required in Exhibit D of these Guidelines. The proof of coverage should include Additional Insured Endorsements, 30-Day Notice of Cancellation Endorsements and Waiver of Subrogation Endorsements.

## **18. Commercial Property Insurance**

Such Insurance shall cover the Demised Premises in an amount not less than the Full Insurable Value of the Demised Premises covering, at a minimum, the perils Insured under the ISO Special Causes of Loss Form CP 10 30<sup>27</sup>, or the equivalent, including coverage for loss caused by enforcement of ordinances or laws to the extent it is commercially available. Full Insurable Value shall mean actual replacement cost of the real property (exclusive of the cost of non-insurable portions thereof, such as excavation, foundations and footings). The coverage should include “Equipment Breakdown Coverage,” which used to be and may sometimes still be referred to as “Boiler & Machinery Coverage.” The “Equipment Breakdown Coverage” can be provided as part of a Commercial Property Insurance policy or as a separate standalone placement. Where there is stand-alone placement both policies should contain a joint loss endorsement.

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<sup>26</sup> The amount of coverage required should be assessed by the Agency in association with the risk involved with a specific contract.

<sup>27</sup> The referenced Cause of Loss Form CP 10 30 contains the following exclusions: Ordinance or Law, Earth Movement, Governmental Action, Nuclear Hazard, Utility Services, War and Military Action, Water, and Fungus / Wet Rot, / Dry Rot / Bacteria. As a practical matter, most Commercial Property Insurance policies are written to provide some amount of Ordinance of Law coverage. Earth Movement, Utility Services, and coverage for Water (i.e., flood coverage) is attainable in the market and would be provided as an Endorsement to the Commercial Property Insurance policy.



## CHAPTER 4 - RECOMMENDED POLICY LIMITS

This chapter provides three (3) matrices listing the various types of activities / contracts that the Agencies would typically be involved with and details the amounts of Insurance that would typically be required in those instances.

Each matrix is divided into columns providing information on some or all of the following items:

- Category (Activities/Contract Type);
- Workers' Compensation and NYS Disability Benefits Insurance;
- Commercial General Liability Insurance requirements, with 2 sub-columns;
- Owners & Contractors' Protective Liability, with 2 sub-columns;
- Builder's Risk Insurance;
- Business Auto Liability;
- Professional Liability Insurance/Errors and Omissions Liability Insurance;
- Railroad Protective Liability Insurance;
- Environmental Liability Insurance;
- Marine (Protection and Indemnity);
- Technology Errors and Omissions Liability;
- Data Breach and Privacy Liability Insurance (Cyber Insurance);
- Crime Insurance; and
- Garage Liability Insurance and Garagekeepers Legal Liability.

To determine the Insurance requirements for a particular contract, refer to Chapter 2 for a description of each line of coverage and a discussion of those circumstances under which each form of Insurance should be required. Chapter 3 offers model contract language for Insurance specifications.

The matrices that follow specify recommended limits for various activities and lines of Insurance coverage. To find the recommended limits, locate the activity that is the basis of the subject contract in the Category column. The activities are listed alphabetically and are divided into three major categories:

- Capital Construction;
- Building Services;
- Procurement/Professional Services/Commodities/Discretionary Purchases.

Within each major category, the various activities are listed alphabetically.

Once the applicable matrix and activities have been selected, the recommended Insurance limits should be inserted. Limits may be provided through a combination of primary and Umbrella/Excess Liability Policies.

Please note that specific projects/contracts may require increased limits or additional lines of coverage based on the nature and/or hazards of the work involved. **The limits and lines of Insurance coverage shown in the matrices are not intended to apply to all contracts or anticipated operations.** The Agency should adjust the lines of Insurance required, and the limits specified for each line of coverage, as needed to make those requirements commensurate with the exposure created by the work or the operations. The Agency's Insurance Analyst should be consulted if there are any particular questions or concerns.

New York State  
Insurance Matrix C - Recommended Policy Limits <sup>1</sup>  
PROCUREMENT / SERVICES / COMMODITIES

Category	A	B	C		D	E	F	G	H	I
	Workers' Compensation	NYS Disability Benefits	Commercial General Liability <sup>2</sup> in combination with Excess (Umbrella) Liability		Business Automobile Liability	Professional Liability	Technology Errors and Omissions	Crime	Garage Liability/Garage Keepers Liability	
			Each Occurrence	General Aggregate	Combined Single Limit					
Other	Coverage shall be required in every contract, with limits as specified by law									
IT			\$1,000,000	\$2,000,000		\$1,000,000	\$1,000,000	\$50,000		
Outsource:										
Web Design			TBD	TBD		TBD	\$1,000,000			
Hunting/Fishing Licenses					TBD					
Campground Reservations										
Personal Service			\$1,000,000	\$2,000,000	\$1,000,000	\$1,000,000		\$50,000		
Purchasing					TBD	TBD				
Airplane			Aircraft Liability							

NOTES:

1. The recommended limits and forms of insurance coverage listed in this matrix contemplate those exposures that are considered most common for the subject operations. The limits and lines of insurance coverage are not necessarily intended to apply to all contracts or intended operations. The Agency must take into consideration the potential exposure created by the work or operations that are the subject of the contract, and then adjust the form of insurance coverage and the corresponding limits commensurately. Consideration should be given to including insurance requirements in all transactions, even those which fall under discretionary purchasing.
2. **Commercial General Liability and Excess (Umbrella) Liability:**
  - a. Each Occurrence limits should be provided such that the sum of the Commercial General Liability Per Occurrence and the Excess/Umbrella limits is equal to or greater than the total listed in column C.
  - b. General Aggregate limits should be provided such that the sum of the General Aggregate and Excess/Umbrella limits is equal to or greater than the total listed in column D.
  - c. Products/Completed Operations limits should be provided such that the sum of the Products/Completed Operations Aggregate and the Excess/Umbrella Liability limits is equal to or greater than the General Aggregate limit listed in column D.
  - d. Personal & Advertising Injury limits of \$1,000,000 (see Chapter 3 of this manual) can be achieved by a combination of CGL and Excess (Umbrella) limits.

New York State  
Insurance Matrix A - Recommended Policy Limits<sup>1</sup>  
CAPITAL CONSTRUCTION

	A	B	C	D	E	F	G	H	I	J	J	K						
Category	Workers' Compensation	NYS Disability Benefits	Commercial General Liability <sup>2</sup> in combination with Excess (Umbrella) Liability		Owners & Contractors Protective Liability <sup>3</sup>		Builders' Risk <sup>4</sup>	Business Automobile Liability	Professional Liability <sup>5</sup>	Railroad Protective	Environmental Liability <sup>6</sup>	Marine <sup>7</sup> (Protection & Indemnity)						
			Each Occurrence	General Aggregate	Each Occurrence	General Aggregate		Combined Single Limit										
<u>Design</u>	Coverage shall be required in every contract, with limits as specified by law		\$2,000,000	\$2,000,000	Does Not Apply		Does Not Apply	\$1,000,000	< \$25M = \$2,000,000  >\$25M = \$5,000,000	Limits to be determined by the Railroad	\$2,000,000							
Architectural																		
Engineering																		
<u>Construction</u>					\$1,000,000	\$2,000,000	Total Value of Contract		Does Not Apply									
Contract Value																		
< \$10M			\$2,000,000	\$2,000,000														
> \$10M - \$50M			\$5,000,000	\$5,000,000					\$2,000,000		\$2,000,000							
> \$50M			\$10,000,000	\$10,000,000					\$5,000,000		\$5,000,000							
									\$10,000,000		\$10,000,000							
<u>Construction Management</u>							Does Not Apply						< \$25M = \$2,000,000  >\$25M = \$5,000,000					
Contract Value																		
< \$10M			\$5,000,000	\$5,000,000													\$5,000,000	\$5,000,000
> \$10M - \$50M			\$10,000,000	\$10,000,000													\$10,000,000	\$10,000,000
> \$50M			\$25,000,000	\$25,000,000													\$25,000,000	\$25,000,000

NOTES:

- The recommended limits and forms of insurance coverage listed in this matrix contemplate those exposures that are considered most common for the subject operations. The limits and lines of insurance coverage are not necessarily intended to apply to all contracts or intended operations. The Agency must take into consideration the potential exposure created by the work or operations that are the subject of the contract, and then adjust the form of insurance coverage and the corresponding limits commensurately. Consideration should be given to including insurance requirements in all transactions, even those which fall under discretionary purchasing.
- Commercial General Liability and Excess (Umbrella) Liability:**
  - Each Occurrence limits should be provided such that the sum of the Commercial General Liability (CGL) Per Occurrence and the Excess/Umbrella limits is equal to or greater than the total listed in column C. CGL insurance limits for Construction contracts are to be based on the total value of the contract, using the ranges shown in the Category column.
  - General Aggregate limits should be provided such that the sum of the General Aggregate and Excess/Umbrella limits is equal to or greater than the total listed in column D. CGL insurance limits for Construction contracts are to be based on the total value of the contract, using the ranges shown in the Category column; the limits apply on a per project/per job basis.
  - Products/Completed Operations limits should be provided such that the sum of the Products/Completed Operations Aggregate and the Excess/Umbrella Liability limits is equal to or greater than the General Aggregate limit listed in column D.
  - Personal & Advertising Injury limits of \$1,000,000 (see Chapter 3 of this manual) can be achieved by a combination of CGL and Excess (Umbrella) limits.
- Owners & Contractors' Protective** - This insurance type *is not applicable* to Architectural or Engineering contracts.
- Builders' Risk** - This form of insurance applies *only to* Construction contracts that involve buildings or structures being constructed, erected or fabricated (i.e., vertical construction). The insurance does not apply to road (i.e., horizontal) construction, but may apply to related structures like bridges, toll booths, etc. Limits should be determined based on the total value of the contract.
- Professional Liability** - Limits are to be based on the total value of the completed project. Requirements *do not* apply to Construction contracts.
- Environmental Liability** - Limits specified in the matrix are guidelines. Contractual limit requirements should be adjusted commensurate with the exposures and the nature of the contracted work. When environmental coverage is included in a CGL policy, minimum required limits should be increased to the sum of the two required limits.
- Marine (Protection & Indemnity)** - Limits specified in the matrix are guidelines. Contractual limit requirements should be adjusted commensurate with the exposures and the nature of the contracted work.

New York State  
Insurance Matrix B - Recommended Policy Limits <sup>1</sup>  
**BUILDING SERVICES**

	A	B	C	D	E	F	G	H	I	J	K			
Category	Workers' Compensation	NYS Disability Benefits	Commercial General Liability <sup>2</sup> in combination with Excess (Umbrella) Liability		Owners & Contractors Protective Liability <sup>3</sup>		Business Automobile Liability	Professional Liability <sup>4</sup>	Railroad Protective	Environmental Liability <sup>5</sup>	Marine <sup>6</sup> (Protection & Indemnity)			
			Each Occurrence	General Aggregate	Each Occurrence	General Aggregate	Combined Single Limit							
<u>Demolition</u>	Coverage shall be required in every contract, with limits as specified by law													
< \$10M			\$2,000,000	\$2,000,000	\$1,000,000	\$2,000,000		< \$25M = \$2,000,000		\$2,000,000	\$2,000,000			
> \$10M - \$50M			\$5,000,000	\$5,000,000				>\$25M = \$5,000,000		\$5,000,000	\$5,000,000			
> \$50M			\$10,000,000	\$10,000,000						\$10,000,000	\$10,000,000			
<u>Building Services</u>			<\$10M = \$2,000,000  \$10M to \$50M = \$5,000,000  >\$50M = \$10,000,007	<\$10M = \$2,000,000  \$10M to \$50M = \$5,000,000  >\$50M = \$10,000,007	Does Not Apply		\$1,000,000		Limits to be determined by the Railroad	<\$10M = \$2,000,000  \$10M to \$50M = \$5,000,000  >\$50M = \$10,000,007	<\$10M = \$2,000,000  \$10M to \$50M = \$5,000,000  >\$50M = \$10,000,007			
Testing Work, Air, Surveys, Materials								\$2,000,000						
Building Maintenance								Does Not Apply						
Leased Space														
Hazardous Waste Removal														
Rubbish/Garbage Removal														
Landscaping/Lawn Care														
Snow Removal														
Tree Removal														
Vehicle Service/Maintenance														
Extermination														
Moving														

NOTES:

1. The recommended limits and forms of insurance coverage listed in this matrix contemplate those exposures that are considered most common for the subject operations. The limits and lines of insurance coverage are not necessarily intended to apply to all contracts or intended operations. The Agency must take into consideration the potential exposure created by the work or operations that are the subject of the contract, and then adjust the form of insurance coverage and the corresponding limits commensurately. Consideration should be given to including insurance requirements in all transactions, even those which fall under discretionary purchasing.

**2. Commercial General Liability and Excess (Umbrella) Liability:**

- Each Occurrence limits should be provided such that the sum of the Commercial General Liability (CGL) Per Occurrence and the Excess/Umbrella limits is equal to or greater than the total listed in column C. Contract insurance limits for Demolition and/or Building Services contracts are to be based on the total value of the contract, using the ranges shown in the Category column.
- General Aggregate limits should be provided such that the sum of the General Aggregate and Excess/Umbrella limits is equal to or greater than the total listed in column D. Contract insurance limits for Demolition and/or Building Services contracts are to be based on the total value of the contract, using the ranges shown in the Category column; the limits apply on a per project/per job basis.
- Products/Completed Operations limits should be provided such that the sum of the Products/Completed Operations Aggregate and the Excess/Umbrella Liability limits is equal to or greater than the General Aggregate limit listed in column B. Contract insurance limits for Demolition and/or Building Services contracts are to be based on the total value of the contract.
- Personal & Advertising Injury limits of \$1,000,000 (see Chapter 3 of this manual) can be achieved by a combination of CGL and Excess (Umbrella) limits.

3. **Owners & Contractors' Protective** - Requirements do not apply to Building Services contracts.

4. **Professional Liability** - Limits for a demolition project, where applicable, are to be based on the total value of the completed project.

5. **Environmental Liability** - Limits specified in the matrix are guidelines. Contractual limit requirements should be adjusted commensurate with the exposures and the nature of the contracted work. When environmental coverage is included in a CGL policy, minimum required limits should be increased to the sum of the two required limits.

6. **Marine (Protection & Indemnity)** - Limits specified in the matrix are guidelines. Contractual limit requirements should be adjusted commensurate with the exposures and the nature of the contracted work.

## **CHAPTER 5 – CONTRACT ADMINISTRATION**

This chapter provides a general overview of the Insurance compliance function as it relates to the contract process. In addition, guidance is provided on the review process utilized for acceptance/approval of Insurance documentation/certificates.

[**Note:** Each individual Agency should revise the following process as necessary to meet its specific needs and internal policies/operations].

### **I. What needs to be done after the contract has been signed and before work has begun:**

Upon notification of contract signing, the Insurance Analyst or the contract manager will create an Insurance file for all Insurance-related correspondence for the contract. This file will include a list of all Insurance required by the contract and a list of all parties to be identified as Additional Insureds. All Insurance required for the project/contract must be submitted to the Insurance Analyst or the contract manager for review and approval prior to start of work. If the documentation submitted is not approved, the Insurance Analyst or the contract manager will contact the Contractor indicating the reasons for non-approval. The contract manager or the Insurance Analyst will follow up with the Contractor to obtain proper evidence of insurance. Once proper evidence of Insurance is received, the Insurance Analyst or the contract manager will notify the Contractor that work may begin.

### **II. During the Contract:**

#### **1. Insurance review**

During the contract period, the Insurance Analyst or the contract manager will be responsible for collection, review and maintenance of all Insurance-related documentation and files. Specifically, the Insurance Analyst or the contract manager will review each Insurance Certificate submitted for approval to ensure compliance with all Agency Insurance requirements. During this review particular attention should be given to determining if the proposed coverage contains any exclusions that the Agency should not accept (for example: height, gravity related and geographic exclusions along with exclusions for injuries to employees and subcontractors and New York State Labor Law exclusions). The use of an Insurance checklist is recommended (see Exhibit C).

#### **2. Monitor renewal/expiration dates**

If any policies will expire during the term of the contract, the Insurance Analyst or the contract manager will diary the forms for 30 days before the expiration of the Insurance. At that time, if proof of renewal or replacement of coverage has not been received, the Insurance Analyst or the contract manager will send a letter to the Contractor stating that the Agency requires receipt of a new Certificate of Insurance before the existing coverage expires.

#### **3. Cancellation Notices**

Upon notification of Insurance cancellation, the Insurance Analyst or the contract manager will contact the Contractor stating that the Agency requires receipt of a new Certificate of Insurance immediately or by the Insurance cancellation date, whichever is later.

4. Claims/Incidents that may lead to a claim.

Upon notification of a Claim or of incidents leading to potential claims, the Insurance Analyst or the contract manager will contact the Agency Legal Department for further direction and notification to the Attorney General, as appropriate. In some Agencies, the Insurance Analyst or the contract manager may be responsible for notifying the Insurance carrier of situations causing potential Claims.

**III. At the conclusion of the contract:**

The Insurance Analyst or the contract manager will ensure that all required Insurance documentation is on file through the acceptance/completion date of the contract. Once a contract has been completed, the Insurance Analyst or the contract manager will retain all Insurance documentation on file for a period after the contract end date that is sufficient to allow for adequate legal response to any subsequent Claims and in compliance with all applicable records retention requirements.

## **PART V**

### **Exhibits A – D**

- A. Certificate of Insurance Forms
- B. Guidelines for Submitting Evidence of Insurance to Agencies
- C. Agency Procedures for Tracking and Approval and Agency Insurance Approval Form
- D. Use of Unmanned Aircraft Systems Procedure



# **PART V-EXHIBIT A**

## **EXHIBITS A 1-4**

# **SAMPLE CERTIFICATE OF INSURANCE FORMS**

# **Exhibit A.1**

## **Sample ACORD Certificates of Liability Insurance**

**ACORD 25 (2016/03)**

**Without Pollution**

**With Pollution**



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
Completed

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b>  Completed with Broker/Agency Name Broker/Agency Address	<b>CONTACT NAME:</b> Preferred to be completed with	
	<b>PHONE (A/C. No. Ext):</b> Broker/Agency Contact Info	<b>FAX (A/C. No.):</b>
<b>INSURED</b>  Completed with Contracting Entity Name Contracting Entity Address	<b>E-MAIL ADDRESS:</b>	
	<b>INSURER(S) AFFORDING COVERAGE</b>	
	<b>NAIC #</b>	
	<b>INSURER A :</b>	
	<b>INSURER B :</b> Completed with Insurer information and NAIC#	
	<b>INSURER C :</b>	
<b>INSURER D :</b>		
<b>INSURER E :</b>		
<b>INSURER F :</b>		

## COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
Completed	<b>COMMERCIAL GENERAL LIABILITY</b>						EACH OCCURRENCE \$ <b>Completed</b>
	<input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence) \$
							MED EXP (Any one person) \$ <b>May be required</b>
							PERSONAL & ADV INJURY \$ <b>Completed</b>
							GENERAL AGGREGATE \$ <b>Completed</b>
							PRODUCTS - COMP/OP AGG \$ <b>Completed</b>
	GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:						\$
Completed	<b>AUTOMOBILE LIABILITY</b>						COMBINED SINGLE LIMIT (Ea accident) \$ <b>May be required</b>
	<input checked="" type="checkbox"/> ANY AUTO						BODILY INJURY (Per person) \$
	<input type="checkbox"/> OWNED AUTOS ONLY						BODILY INJURY (Per accident) \$
	<input type="checkbox"/> HIRED AUTOS ONLY						PROPERTY DAMAGE (Per accident) \$
							\$
							\$
Completed	<input checked="" type="checkbox"/> <b>UMBRELLA LIAB</b>						EACH OCCURRENCE \$ <b>May be required</b>
	<input checked="" type="checkbox"/> <b>EXCESS LIAB</b>						AGGREGATE \$ <b>May be required</b>
							\$
	DED <input type="checkbox"/> RETENTION \$						\$
	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b>						PER STATUTE <input type="checkbox"/> OTH-ER <input type="checkbox"/>
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)						E.L. EACH ACCIDENT \$
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE \$
							E.L. DISEASE - POLICY LIMIT \$
	<b>Another policy, if required</b>						<b>May be required</b>

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Additional named insured listed here

## CERTIFICATE HOLDER

## CANCELLATION

<b>Certificate holder for the contract</b>	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE <b>Check for signature</b>

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# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
Completed

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b>  Completed with Broker/Agency Name Broker/Agency Address	<b>CONTACT NAME:</b> Preferred to be completed with	
	<b>PHONE (A/C, No. Ext):</b> Broker/Agency Contact Info	<b>FAX (A/C, No):</b>
<b>INSURED</b>  Completed with Contracting Entity Name Contracting Entity Address	<b>E-MAIL ADDRESS:</b>	
	<b>INSURER(S) AFFORDING COVERAGE</b>	
	<b>NAIC #</b>	
	<b>INSURER A :</b>	
	<b>INSURER B :</b> Completed with Insurer information and NAIC#	
	<b>INSURER C :</b>	
<b>INSURER D :</b>		
<b>INSURER E :</b>		
<b>INSURER F :</b>		

## COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	<b>COMMERCIAL GENERAL LIABILITY</b>						EACH OCCURRENCE
	<input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence)
							MED EXP (Any one person)
							PERSONAL & ADV INJURY
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE
	<input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC						PRODUCTS - COMP/OP AGG
	OTHER:						
	<b>AUTOMOBILE LIABILITY</b>						COMBINED SINGLE LIMIT (Ea accident)
	<input type="checkbox"/> ANY AUTO						BODILY INJURY (Per person)
	<input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS						BODILY INJURY (Per accident)
	<input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY						PROPERTY DAMAGE (Per accident)
	<b>UMBRELLA LIAB</b>						EACH OCCURRENCE
	<input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE						AGGREGATE
	DED <input type="checkbox"/> RETENTION \$						
	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b>						PER STATUTE <input type="checkbox"/> OTH-ER <input type="checkbox"/>
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input type="checkbox"/> Y / N <input type="checkbox"/> N / A						E.L. EACH ACCIDENT
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE
							E.L. DISEASE - POLICY LIMIT
	<b>Pollution Liability</b>			Completed	Completed	Completed	Completed Occurrence & Aggregate

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Additional named insured listed here

## CERTIFICATE HOLDER

## CANCELLATION

Certificate holder for the contract	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE Check for signature

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## **Exhibit A.2**

### **Sample ACORD Construction Certificate of Liability Insurance Addendum and Guidance on How to Review the ACORD 855**

#### **ACORD 855**



# NEW YORK CONSTRUCTION CERTIFICATE OF LIABILITY INSURANCE ADDENDUM

DATE (MM/DD/YYYY)

THIS ADDENDUM SUMMARIZES SOME OF THE POLICY PROVISIONS IN THE REFERENCED INSURANCE POLICIES AND IS ISSUED AS A MATTER OF INFORMATION ONLY; IT CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. ALL TERMS, EXCLUSIONS AND CONDITIONS IN THE ACTUAL POLICY SHOULD BE CONSULTED FOR A MORE DETAILED ANALYSIS OF COVERAGE, AS THIS ADDENDUM DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES.

AGENCY		NAMED INSURED(S)	
All header information must match Acord 25 form			
POLICY NUMBER	EFFECTIVE DATE	CARRIER	NAIC CODE

## ADDENDUM INFORMATION

CERTIFICATE NUMBER:

REVISION NUMBER:

## A. Insurer

- ☒ Admitted / authorized Preferred/Not Required
- ☐ Excess line or free trade zone

## B. General Liability (GL) policy form

- ☒ ISO / ISO modified Most Common
- ☐ Other

## C. Specific operations excluded or restricted (GL policy) Review any exclusions against the requirements of the contract

- ☐ Location: \_\_\_\_\_
- ☐ Type of construction: \_\_\_\_\_
- ☐ Building height: \_\_\_\_\_
- ☐ Classifications [see attached declarations / endorsement]
- ☐ Designated work [see attached endorsement]

## D. Additional insured endorsement (GL policy) Title: Take care to review all endorsement forms.

- ☐ CG 20 10 ☐ CG 20 26 ☐ CG 20 32 ☐ CG 20 33 ☐ CG 20 37 ☐ CG 20 38
- ☐ Other: #: \_\_\_\_\_

## E. According to the terms of this GL policy, the additional insured has primary and noncontributory coverage

- ☒ Yes ☐ No and ☐ no other option is available with this insurer
- If no, this requires an explanation

## F. Additional insured will receive advance notice if insurer cancels (GL policy)

- ☒ Yes ☐ No and ☐ no other option is available with this insurer
- If no, this requires an explanation

## G. Blanket contractual liability located in the "insured contract" definition (Section V, Number 9, Item f. in the ISO CGL policy) is removed or restricted

- ☐ Yes and ☐ no other option is available with this insurer ☒ No changes made
- If yes, this requires an explanation

## H. "Insured contract" exception to the employers liability exclusion is removed or modified (GL policy)

- ☐ Yes and ☐ no other option is available with this insurer ☒ No changes made
- If yes, this requires an explanation and agency review

## I. GL policy (including endorsements) does not cover the additional insured for claims involving injury to employees of the named insured or subcontractors (not workers' compensation)

- ☐ Yes and ☐ no other option is available with this insurer ☒ No changes made

CANNOT ACCEPT "yes"

ADDENDUM INFORMATION (continued)

AGENCY CUSTOMER ID: \_\_\_\_\_

J. Earth movement, excavation or explosion / collapse / underground property damage is excluded or restricted (GL policy)

☐ Yes and ☐ no other option is available with this insurer ☒ No changes made

K. Insured vs. insured suits (cross liability in the ISO CGL policy) are excluded or restricted (other than named insured vs. named insured)

☐ Yes and ☐ no other option is available with this insurer ☒ No changes made

L. Property damage to work performed by subcontractors (exception to the "damage to your work" exclusion in the ISO CGL policy) is excluded or restricted

☐ Yes and ☐ no other option is available with this insurer ☒ No changes made

If yes, this requires and explanation and agency review

M. Excess / umbrella policy is primary and non-contributory for additional insureds

☒ Yes, by specific policy provision ☐ Yes, by endorsement ☐ No and ☐ no other option is available with this insurer

Yes -preferred

This information is provided as general guidance and is not intended to be legal advice.

Consult with your agency's legal counsel to determine if responses received on the ACORD form are appropriate.

\_\_\_\_\_  
AUTHORIZED REPRESENTATIVE SIGNATURE

\_\_\_\_\_  
DATE (MM/DD/YYYY)



## ACORD 855 – Review Guide

The ACORD 855 Certificate of Liability Insurance Addendum (“ACORD 855”) is intended to summarize some policy provisions. A review of the ACORD 855 can reveal possible differences between the kind of Insurance required by an Agency’s contract and the Contractor’s actual Commercial General Liability Insurance (CGL) policy. The guidance provided below is general in nature, each Agency should conduct its review against the Insurance requirements set forth by the Agency on a particular contract.

### General

- The policy number should match the policy number on the ACORD 25 form
- The Named Insured(s) should match the name of the Contractor

### Form Content

While each of the responses on the ACORD 855 provide important information regarding the coverage provided by the policy, the entries in RED present a higher risk to the Agency; these responses are more likely to highlight inadequate coverage that could result in a liability for the Agency.

#### A. Insurer

If coverage is provided by a non-admitted carrier, an Excess Line Association of New York (ELANY) Affidavit must accompany the certificate. ELANY will only provide documentation for Contractors that are New York State Vendors. If the Contractor is not a New York State Vendor, it is suggested that the Agency make a determination on whether to accept the offered coverage by looking at the proposed Insurer’s AM Best rating, the coverage provided, the risk involved and other pertinent factors.

#### B. General Liability (GL) Policy Form

If the contractual requirement includes a reference to an ISO form this will most commonly be the CG 00 01 or a form that closely follows this form (as in the case of Travelers). If the response on Line B of the 855 indicates an Excess line or free trade zone policy, then the policy probably varies substantially from the standard ISO policy and those modifications should be reviewed.

ISO is the Insurance Services Office, Inc., an organization created for the purpose of developing standard Insurance forms, collecting statistical data, and promulgating rates for the Insurance industry.

#### C. Specific Operations Excluded or Restricted (GL policy)

Care must be taken to assure that the specific work/operations to be performed pursuant to the contract are not excluded or modified by a policy Endorsement. If, for example, the response tells us that coverage is limited to a certain geographic location or excludes coverage for a specific location (such as the City of New York), then attention must be paid to assure that there will be coverage against Claims that arise in the project location. If the response says that excavating is excluded, the Contractor isn’t insured for excavating. If the response includes a labor law exclusion for work at heights and the contract includes any work on ladders, or on roofs, those activities would not be

covered. The Agency should review any exclusions, taking into consideration the scope of work specific to that contract, to determine if such exclusions are acceptable. Never accept an exclusion that will exclude coverage for your project.

D. Additional Insured Endorsement (GL policy)

An Additional Insured Endorsement is required. There are seven common Additional Insured Endorsements listed on the ACORD 855, however there are many more Endorsements in use. There are subtle variations in Endorsement language that could limit or impact coverage.

Therefore, an Endorsement other than those listed within the ACORD 855 must be reviewed by the Agency to determine if the Endorsement provides coverage equivalent to the coverage required by the Agency.

E. According to the terms of this GL policy, the Additional Insured has primary and noncontributory coverage

The response should be “Yes” where primary and non-contributory Insurance is specified. If the response is “No,” an explanation is required and should be evaluated by the Agency.

An “Other Insurance” clause provides for other treatment where other Insurance is available. This could be because an OCP policy is primary, which is generally not a problem for a self-insured owner (i.e., there is no other Insurance).

F. Additional Insured will receive advance notice if Insurer cancels (GL policy)

The response should be “Yes”. If the response is “No,” an explanation is required and should be evaluated by the Agency.

G. Blanket contractual liability located in the "insured contract" definition (Section V, Number 9, Item f. in the ISO CGL policy) is removed or restricted

The response should be “No changes made”. If the response is “Yes,” an explanation is required and should be evaluated by the Agency. There are some Endorsements, such as the CG 24 26 that are widely used and modify the definition of “insured contract.” An Agency determination must be made as to whether these Endorsements will exclude coverage.

H. "Insured contract" exception to the employers' liability exclusion is removed or modified

The response should be “No changes made”. If the response is “No,” an explanation is required and should be evaluated by the Agency.

Checking “Yes” means that the Contractor’s policy contains some language or Endorsement that changes the exception in the employers’ liability exclusion for liability assumed under “an insured contract.” Agency contracts should always include indemnification protection for the Agency along with the Insurance requirements. Agencies become an Insured under the Contractor’s policy because indemnification and Insurance are required. The removal of the exception described here can be a way to eliminate coverage for the Agency using the employers’ liability exclusion. The Agency should review and evaluate any changes.

I. GL policy (including Endorsements) does not cover the Additional Insured for Claims involving injury to employees of the Named Insured or subcontractors (not Workers' Compensation)

The response should be “No Changes Made.” This is the ONE response where a “yes” (if it is correct), means the Insurance is unacceptable all of the time.

Checking “Yes” means that the Contractor’s policy contains some language of Endorsement that excludes coverage for Claims by employees doing the work. The reason is most often an exclusion that takes away coverage for Claims by the Contractor’s employees. They usually call this an “action-over” exclusion or Endorsement.

J. Earth movement, excavation or explosion / collapse / Underground Property Damage is excluded or restricted (GL policy)

The response should be “No changes made” where specifications require excavation, collapse & underground damage (XCU) coverage. Agency specifications should require XCU on all contracts that call for the performance of excavating, underground work or blasting. If the Contractor is not doing work of that nature, the exclusion is unimportant.

K. Insured vs. Insured suits (Cross Liability in the ISO CGL policy) are excluded or restricted (other than Named Insured vs. Named Insured)

The response should be “No Changes Made,” the base CGL coverage form’s Separation of Insureds provision does allow for an Additional Insured to make a Claim against the policy. Only if the form is amended to modify the base form's Separation of Insureds language would there be a potential problem. where primary and non-contributory Insurance is specified. If the response is “No,” an explanation is required.

L. Property damage to work performed by subcontractors (exception to the "damage to your work" exclusion in the ISO CGL policy) is excluded or restricted

The response should be “No changes made.” If the response is “Yes,” an explanation is required and should be evaluated by the Agency.

M. Excess Liability Policy/Umbrella Liability Policy is primary and non-contributory for Additional Insureds

The response should be “Yes, by specific policy provision” or “Yes, by Endorsement.” If the response is “No” an explanation is required and should be evaluated by the Agency.

An “Other Insurance” clause provides for other treatment where other Insurance is available, which could be because an OCP policy is primary. This is generally not a problem for a self-insured owner (i.e., there is no other Insurance).

The ACORD 855 should be fully completed including a signature and date and a copy should be maintained by the Agency in case of a dispute. Original signatures need not be required unless required under your Agency’s policies.

Finally, it should also be noted that the entries on the ACORD 855 do NOT change the terms of an Insurance policy. Agencies are responsible for checking that Insurance conforms with contractual requirements. In the best case, entries on the ACORD forms may be used to make an “estoppel” argument or for the Contractor to assert a Claim against the producer when the Agency is denied Insurance coverage and turns to the Contractor for indemnification.

## **Exhibit A.3**

### **Sample ACORD Certificate of Property Insurance**

**ACORD 27 (2016/03)**



# EVIDENCE OF PROPERTY INSURANCE

DATE (MM/DD/YYYY)  
**Completed**

THIS EVIDENCE OF PROPERTY INSURANCE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE ADDITIONAL INTEREST NAMED BELOW. THIS EVIDENCE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS EVIDENCE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE ADDITIONAL INTEREST.

AGENCY		PHONE (A/C, No, Ext): <b>Preferred Completed</b>	COMPANY	
Completed with Broker/Agency Completed with Broker's Address Completed with Broker's Address		Completed with Insurance Carrier Completed with Insurance Carrier Address Completed with Insurance Carrier Address		
FAX (A/C, No):	E-MAIL ADDRESS: <b>Preferred Completed</b>			
CODE:	SUB CODE:			
AGENCY CUSTOMER ID #:				
INSURED		LOAN NUMBER	POLICY NUMBER <b>Completed</b>	
Completed with Contracting Entity Name Completed with Contracting Entity Address Completed with Contracting Entity Address		EFFECTIVE DATE <b>Completed</b>	EXPIRATION DATE <b>Completed</b>	<input type="checkbox"/> CONTINUED UNTIL TERMINATED IF CHECKED
THIS REPLACES PRIOR EVIDENCE DATED:				

## PROPERTY INFORMATION

LOCATION/DESCRIPTION
<b>Review; Does Location and Description Match Requirements</b>
THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS EVIDENCE OF PROPERTY INSURANCE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

## COVERAGE INFORMATION

PERILS INSURED ☐ BASIC ☐ BROAD ☐ SPECIAL ☐

COVERAGE / PERILS / FORMS	AMOUNT OF INSURANCE	DEDUCTIBLE
<b>Completed</b>	<b>Completed</b>	<b>Completed</b>

## REMARKS (Including Special Conditions)

--

## CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

## ADDITIONAL INTEREST

NAME AND ADDRESS  <b>The Certificate Holder for your Contract Address Address</b>	ADDITIONAL INSURED <input type="checkbox"/>	LENDER'S LOSS PAYABLE <input type="checkbox"/>	LOSS PAYEE <input type="checkbox"/>
	MORTGAGEE <input type="checkbox"/>		
	LOAN #		
AUTHORIZED REPRESENTATIVE <b>Check for Signature</b>			

# **Exhibit A.4**

## **Sample ACORD Certificate of Commercial Property Insurance**

**ACORD 28 (2016/03)**



# EVIDENCE OF COMMERCIAL PROPERTY INSURANCE

DATE (MM/DD/YYYY)  
**Completed**

THIS EVIDENCE OF COMMERCIAL PROPERTY INSURANCE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE ADDITIONAL INTEREST NAMED BELOW. THIS EVIDENCE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS EVIDENCE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE ADDITIONAL INTEREST.

PRODUCER NAME, CONTACT PERSON AND ADDRESS <b>Completed with Broker/Agency</b> <b>Completed with Broker's Address</b> <b>Completed with Broker's Address</b>		PHONE (A/C, No, Ext): <b>Preferred Completed</b>	COMPANY NAME AND ADDRESS <b>Completed with Insurance Carrier</b> <b>Completed with Insurance Carrier Address</b> <b>Completed with Insurance Carrier Address</b>	NAIC NO: <b>Completed</b>
FAX (A/C, No):	E-MAIL ADDRESS: <b>Preferred Completed</b>		IF MULTIPLE COMPANIES, COMPLETE SEPARATE FORM FOR EACH	
CODE: <b>Completed</b>	SUB CODE:		POLICY TYPE <b>Completed</b>	
AGENCY CUSTOMER ID #: <b>Completed</b>			LOAN NUMBER	POLICY NUMBER <b>Completed</b>
NAMED INSURED AND ADDRESS <b>Completed with Contracting Entity Name</b> <b>Completed with Contracting Entity Address</b> <b>Completed with Contracting Entity Address</b>			EFFECTIVE DATE <b>Completed</b>	EXPIRATION DATE <b>Completed</b>
ADDITIONAL NAMED INSURED(S) <b>Accepted if Contracting Entity is the Named Insured and Parent Co is Insured</b>			<input type="checkbox"/> CONTINUED UNTIL TERMINATED IF CHECKED	
			THIS REPLACES PRIOR EVIDENCE DATED:	

**PROPERTY INFORMATION (ACORD 101 may be attached if more space is required) ☐ BUILDING OR ☐ BUSINESS PERSONAL PROPERTY**

LOCATION / DESCRIPTION <b>Review; Does Location and Description Meet Requirements</b>
THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS EVIDENCE OF PROPERTY INSURANCE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

COVERAGE INFORMATION		PERILS INSURED	BASIC	BROAD	SPECIAL
COMMERCIAL PROPERTY COVERAGE AMOUNT OF INSURANCE: \$ <b>Completed</b>		DED:			
		YES	NO	N/A	
<input type="checkbox"/> BUSINESS INCOME	<input type="checkbox"/> RENTAL VALUE				If YES, LIMIT: Actual Loss Sustained; # of months:
BLANKET COVERAGE					If YES, indicate value(s) reported on property identified above: \$
TERRORISM COVERAGE					Attach Disclosure Notice / DEC
IS THERE A TERRORISM-SPECIFIC EXCLUSION?					
IS DOMESTIC TERRORISM EXCLUDED?					
LIMITED FUNGUS COVERAGE					If YES, LIMIT: DED:
FUNGUS EXCLUSION (If "YES", specify organization's form used)					
REPLACEMENT COST					
AGREED VALUE					
COINSURANCE					If YES, %
EQUIPMENT BREAKDOWN (If Applicable)					If YES, LIMIT: DED:
ORDINANCE OR LAW - Coverage for loss to undamaged portion of bldg					If YES, LIMIT: DED:
- Demolition Costs					If YES, LIMIT: DED:
- Incr. Cost of Construction					If YES, LIMIT: DED:
EARTH MOVEMENT (If Applicable)					If YES, LIMIT: DED:
FLOOD (If Applicable)					If YES, LIMIT: DED:
WIND / HAIL INCL <input type="checkbox"/> YES <input type="checkbox"/> NO Subject to Different Provisions:					If YES, LIMIT: DED:
NAMED STORM INCL <input type="checkbox"/> YES <input type="checkbox"/> NO Subject to Different Provisions:					If YES, LIMIT: DED:
PERMISSION TO WAIVE SUBROGATION IN FAVOR OF MORTGAGE HOLDER PRIOR TO LOSS					

**CANCELLATION**

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

**ADDITIONAL INTEREST**

CONTRACT OF SALE	LENDER'S LOSS PAYABLE	LOSS PAYEE	LENDER SERVICING AGENT NAME AND ADDRESS
MORTGAGEE			
NAME AND ADDRESS <b>The Certificate Holder for your Contract</b> <b>Address</b> <b>Address</b>			AUTHORIZED REPRESENTATIVE <b>Check for Signature</b>

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# List of Acceptable Workers' Compensation and Disability Forms

The New York State Workers' Compensation Law Sections 57 and 220 require the heads of all municipal and state entities to ensure that businesses applying for leases, permits, licenses or contracts have appropriate workers' compensation and disability benefits insurance coverage. These requirements apply to both original issuances and renewals, whether the governmental agency is having the work done or is simply issuing the lease, permit, license or contract. **Failure to provide proper proof of such coverage or a legal exemption will result in a rejection of a contract.** Therefore, prior to the Agency executing a contract, the Contractor must submit proof that it has workers' compensation and disability benefits coverage as required by the New York State Workers' Compensation Law, or proof that it is legally exempt from obtaining such coverage in compliance with the New York State Workers' Compensation Law. Proof of compliance must be submitted on one of the forms designated by the New York State Workers' Compensation Board. An ACORD form is not acceptable proof of New York State workers' compensation or disability benefits insurance coverage.

## Proof of Compliance with the Workers' Compensation Coverage Requirements:

In order to provide proof of compliance with the requirements of the New York State Workers' Compensation Law pertaining to workers' compensation coverage, Contractors shall:

- A) Be legally exempt from obtaining workers' compensation insurance coverage; or
- B) Obtain such coverage from insurance carriers; or
- C) Be a New York State Workers' Compensation Board-approved self-insured employer or participate in an authorized self-insurance plan.

Contractors seeking to enter into contracts with the State of New York shall provide one of the following forms prior to execution of the contract by the Agency:

- A) Form CE-200, *Certificate of Attestation for New York Entities With No Employees and Certain Out of State Entities, That New York State Workers' Compensation and/or Disability Benefits Insurance Coverage is Not Required*, which is available on the New York State Workers' Compensation Board's website ([www.wcb.ny.gov](http://www.wcb.ny.gov));
- B) Form C-105.2 (9/07), *Certificate of Workers' Compensation Insurance*, sent to the Agency by the Contractor's insurance carrier upon request, or if coverage is provided by the New York State Insurance Fund, they will provide Form U-26.3 to the Agency upon request; or
- C) Form SI-12, *Certificate of Workers' Compensation Self-Insurance*, available from the New York State Workers' Compensation Board's Self-Insurance Office, or Form GSI-105.2, *Certificate of Participation in Workers' Compensation Group Self-Insurance*, available from the Contractor's Group Self-Insurance Administrator.

## Proof of Compliance with the Disability Benefits Coverage Requirements:

In order to provide proof of compliance with the requirements of the New York State Workers' Compensation Law pertaining to disability benefits, Contractors shall:

- A) Be legally exempt from obtaining disability benefits coverage; or
- B) Obtain such coverage from insurance carriers; or
- C) Be self-insured.

Contractors seeking to enter into contracts with the State of New York shall provide one of the following forms prior to execution of the contract by the Agency:

- A) Form CE-200, *Certificate of Attestation for New York Entities With No Employees and Certain Out of State Entities, That New York State Workers' Compensation and/or Disability Benefits Insurance Coverage is Not Required*, which is available on the New York State Workers' Compensation Board's website ([www.wcb.ny.gov](http://www.wcb.ny.gov));
- B) Form DB-120.1, *Certificate of Disability Benefits Insurance*, sent to the Agency by the Contractor's insurance carrier upon request; or
- C) Form DB-155, *Certificate of Disability Benefits Self-Insurance*, available from the New York State Workers' Compensation Board's Self-Insurance Office.

Information on the requirements of the New York State Workers' Compensation Law is available at <http://www.wcb.ny.gov/content/main/Employers/requirements-businesses-applying-government-permits-licenses-contracts.pdf>.

## **EXHIBIT A.5-8**

# **SAMPLE WORKERS' COMPENSATION AND DISABILITY INSURANCE FORMS**

## **Exhibit A.5**

**Sample Form U-26.3, *Certificate of Workers’  
Compensation Insurance provided by the New York State  
Insurance Fund***

## CERTIFICATE OF WORKERS' COMPENSATION INSURANCE

^ ^ ^ ^ ^ ^ ^ 146013200  
NY STATE INSURANCE FUND  
PRODUCTION CONTROL POLICY ONE  
199 CHURCH STREET USWS-7TH FL  
NEW YORK NY 10007



SCAN TO VALIDATE  
AND SUBSCRIBE

<b>POLICYHOLDER</b> NY STATE INSURANCE FUND PRODUCTION CONTROL POLICY ONE 199 CHURCH STREET USWS-7TH FL NEW YORK NY 10007		<b>CERTIFICATE HOLDER</b> NEW YORK STATE INSURANCE FUND 15 COMPUTER DRIVE WEST ALBANY NY 12205	
<b>POLICY NUMBER</b> L1265 328-3	<b>CERTIFICATE NUMBER</b> 364910	<b>POLICY PERIOD</b> 12/26/2019 TO 12/26/2020	<b>DATE</b> 7/9/2020

THIS IS TO CERTIFY THAT THE POLICYHOLDER NAMED ABOVE IS INSURED WITH THE NEW YORK STATE INSURANCE FUND UNDER POLICY NO. 1265 328-3, COVERING THE ENTIRE OBLIGATION OF THIS POLICYHOLDER FOR WORKERS' COMPENSATION UNDER THE NEW YORK WORKERS' COMPENSATION LAW WITH RESPECT TO ALL OPERATIONS IN THE STATE OF NEW YORK, EXCEPT AS INDICATED BELOW.

**IF YOU WISH TO RECEIVE NOTIFICATIONS REGARDING SAID POLICY, INCLUDING ANY NOTIFICATION OF CANCELLATIONS, OR TO VALIDATE THIS CERTIFICATE, VISIT OUR WEBSITE AT [HTTPS://WWW.NYSIF.COM/CERT/CERTVAL.ASP](https://www.nysif.com/cert/certval.asp). THE NEW YORK STATE INSURANCE FUND IS NOT LIABLE IN THE EVENT OF FAILURE TO GIVE SUCH NOTIFICATIONS.**

THIS CERTIFICATE DOES NOT APPLY TO THOSE JOB SITES WHICH ARE COVERED BY OTHER INSURANCE AND ARE SPECIFICALLY EXCLUDED BY ENDORSEMENT.

THE POLICY INCLUDES A WAIVER OF SUBROGATION ENDORSEMENT UNDER WHICH NYSIF AGREES TO WAIVE ITS RIGHT OF SUBROGATION TO BRING AN ACTION AGAINST THE CERTIFICATE HOLDER TO RECOVER AMOUNTS WE PAID IN WORKERS' COMPENSATION AND/OR MEDICAL BENEFITS TO OR ON BEHALF OF AN EMPLOYEE OF OUR INSURED IN THE EVENT THAT, PRIOR TO THE DATE OF THE ACCIDENT, THE CERTIFICATE HOLDER HAS ENTERED INTO A WRITTEN CONTRACT WITH OUR INSURED THAT REQUIRES THAT SUCH RIGHT OF SUBROGATION BE WAIVED.

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS NOR INSURANCE COVERAGE UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICY.

NEW YORK STATE INSURANCE FUND

DIRECTOR, INSURANCE FUND UNDERWRITING

VALIDATION NUMBER: 41767935

## **Exhibit A.6**

***Sample Form C-105.2 (9-17), Certificate of Participation  
in Workers' Compensation Group Self-Insurance***



## CERTIFICATE OF NYS WORKERS' COMPENSATION INSURANCE COVERAGE

<p>1a. Legal Name &amp; Address of Insured (use street address only)</p>     <p>Work Location of Insured (Only required if coverage is specifically limited to certain locations in New York State, i.e., a Wrap-Up Policy)</p>	<p>1b. Business Telephone Number of Insured</p>  <p>1c. NYS Unemployment Insurance Employer Registration Number of Insured</p>  <p>1d. Federal Employer Identification Number of Insured or Social Security Number</p>
<p>2. Name and Address of Entity Requesting Proof of Coverage (Entity Being Listed as the Certificate Holder)</p>          	<p>3a. Name of Insurance Carrier</p>  <p>3b. Policy Number of Entity Listed in Box "1a"</p>  <p>3c. Policy effective period</p> <p>_____ to _____</p> <p>3d. The Proprietor, Partners or Executive Officers are</p> <p><input type="checkbox"/> included. (Only check box if all partners/officers included)</p> <p><input type="checkbox"/> all excluded or certain partners/officers excluded.</p>

This certifies that the insurance carrier indicated above in box "3" insures the business referenced above in box "1a" for workers' compensation under the New York State Workers' Compensation Law. **(To use this form, New York (NY) must be listed under Item 3A on the INFORMATION PAGE of the workers' compensation insurance policy).** The Insurance Carrier or its licensed agent will send this Certificate of Insurance to the entity listed above as the certificate holder in box "2".

The insurance carrier must notify the above certificate holder and the Workers' Compensation Board within 10 days IF a policy is canceled due to nonpayment of premiums or within 30 days IF there are reasons other than nonpayment of premiums that cancel the policy or eliminate the insured from the coverage indicated on this Certificate. (These notices may be sent by regular mail.) **Otherwise, this Certificate is valid for one year after this form is approved by the insurance carrier or its licensed agent, or until the policy expiration date listed in box "3c", whichever is earlier.**

This certificate is issued as a matter of information only and confers no rights upon the certificate holder. This certificate does not amend, extend or alter the coverage afforded by the policy listed, nor does it confer any rights or responsibilities beyond those contained in the referenced policy.

This certificate may be used as evidence of a Workers' Compensation contract of insurance only while the underlying policy is in effect.

**Please Note:** Upon cancellation of the workers' compensation policy indicated on this form, if the business continues to be named on a permit, license or contract issued by a certificate holder, the business must provide that certificate holder with a new Certificate of Workers' Compensation Coverage or other authorized proof that the business is complying with the mandatory coverage requirements of the New York State Workers' Compensation Law.

Under penalty of perjury, I certify that I am an authorized representative or licensed agent of the insurance carrier referenced above and that the named insured has the coverage as depicted on this form.

Approved by: \_\_\_\_\_  
(Print name of authorized representative or licensed agent of insurance carrier)

Approved by: \_\_\_\_\_  
(Signature) (Date)

Title: \_\_\_\_\_

Telephone Number of authorized representative or licensed agent of insurance carrier: \_\_\_\_\_

**Please Note:** Only insurance carriers and their licensed agents are authorized to issue Form C-105.2. Insurance brokers are **NOT** authorized to issue it.

## **Workers' Compensation Law**

### **Section 57. Restriction on issue of permits and the entering into contracts unless compensation is secured.**

1. The head of a state or municipal department, board, commission or office authorized or required by law to issue any permit for or in connection with any work involving the employment of employees in a hazardous employment defined by this chapter, and notwithstanding any general or special statute requiring or authorizing the issue of such permits, shall not issue such permit unless proof duly subscribed by an insurance carrier is produced in a form satisfactory to the chair, that compensation for all employees has been secured as provided by this chapter. Nothing herein, however, shall be construed as creating any liability on the part of such state or municipal department, board, commission or office to pay any compensation to any such employee if so employed.
2. The head of a state or municipal department, board, commission or office authorized or required by law to enter into any contract for or in connection with any work involving the employment of employees in a hazardous employment defined by this chapter, notwithstanding any general or special statute requiring or authorizing any such contract, shall not enter into any such contract unless proof duly subscribed by an insurance carrier is produced in a form satisfactory to the chair, that compensation for all employees has been secured as provided by this chapter.



## **Exhibit A.7**

### ***Sample Form DB-120.1 (10-17) Certificate of Insurance Coverage Under the New York State Disability Benefits Law***

# CERTIFICATE OF INSURANCE COVERAGE

## DISABILITY AND PAID FAMILY LEAVE BENEFITS LAW

**PART 1. To be completed by Disability and Paid Family Leave Benefits Carrier or Licensed Insurance Agent of that Carrier**

<p>1a. Legal Name &amp; Address of Insured (use street address only)</p>  <p>Work Location of Insured (<i>Only required if coverage is specifically limited to certain locations in New York State, i.e., Wrap-Up Policy</i>)</p>	<p>1b. Business Telephone Number of Insured</p>  <p>1c. Federal Employer Identification Number of Insured or Social Security Number</p>
<p>2. Name and Address of Entity Requesting Proof of Coverage (Entity Being Listed as the Certificate Holder)</p>	<p>3a. Name of Insurance Carrier</p> <p>3b. Policy Number of Entity Listed in Box "1a"</p> <p>3c. Policy effective period _____ to _____</p>

4. Policy provides the following benefits:
- ☐ A. Both disability and paid family leave benefits.
- ☐ B. Disability benefits only.
- ☐ C. Paid family leave benefits only.
5. Policy covers:
- ☐ A. All of the employer's employees eligible under the NYS Disability and Paid Family Leave Benefits Law.
- ☐ B. Only the following class or classes of employer's employees:

Under penalty of perjury, I certify that I am an authorized representative or licensed agent of the insurance carrier referenced above and that the named insured has NYS Disability and/or Paid Family Leave Benefits insurance coverage as described above.

Date Signed \_\_\_\_\_ By \_\_\_\_\_  
(Signature of insurance carrier's authorized representative or NYS Licensed Insurance Agent of that insurance carrier)

Telephone Number	Name and Title
------------------	----------------

**IMPORTANT:** If Boxes 4A and 5A are checked, and this form is signed by the insurance carrier's authorized representative or NYS Licensed Insurance Agent of that carrier, this certificate is COMPLETE. Mail it directly to the certificate holder.

If Box 4B, 4C or 5B is checked, this certificate is NOT COMPLETE for purposes of Section 220, Subd. 8 of the NYS Disability and Paid Family Leave Benefits Law. It must be mailed for completion to the Workers' Compensation Board, Plans Acceptance Unit, PO Box 5200, Binghamton, NY 13902-5200.

**PART 2. To be completed by the NYS Workers' Compensation Board (Only if Box 4C or 5B of Part 1 has been checked)**

**State of New York  
Workers' Compensation Board**

According to information maintained by the NYS Workers' Compensation Board, the above-named employer has complied with the NYS Disability and Paid Family Leave Benefits Law with respect to all of his/her employees.

Date Signed \_\_\_\_\_ By \_\_\_\_\_  
(Signature of Authorized NYS Workers' Compensation Board Employee)

Telephone Number	Name and Title
------------------	----------------

**Please Note:** Only insurance carriers licensed to write NYS disability and paid family leave benefits insurance policies and NYS licensed insurance agents of those insurance carriers are authorized to issue Form DB-120.1. **Insurance brokers are NOT authorized to issue this form.**



## Additional Instructions for Form DB-120.1

By signing this form, the insurance carrier identified in Box 3 on this form is certifying that it is insuring the business referenced in box "1a" for disability and/or paid family leave benefits under the New York State Disability and Paid Family Leave Benefits Law. The Insurance Carrier or its licensed agent will send this Certificate of Insurance to the entity listed as the certificate holder in Box 2.

The insurance carrier must notify the above certificate holder and the Workers' Compensation Board within 10 days IF a policy is cancelled due to nonpayment of premiums or within 30 days IF there are reasons other than nonpayment of premiums that cancel the policy or eliminate the insured from coverage indicated on this Certificate. (These notices may be sent by regular mail.) Otherwise, this Certificate is valid for one year after this form is approved by the insurance carrier or its licensed agent, or until the policy expiration date listed in Box 3c, whichever is earlier.

This certificate is issued as a matter of information only and confers no rights upon the certificate holder. This certificate does not amend, extend or alter the coverage afforded by the policy listed, nor does it confer any rights or responsibilities beyond those contained in the referenced policy.

This certificate may be used as evidence of a Disability and/or Paid Family Leave Benefits contract of insurance only while the underlying policy is in effect.

**Please Note: Upon the cancellation of the disability and/or paid family leave benefits policy indicated on this form, if the business continues to be named on a permit, license or contract issued by a certificate holder, the business must provide that certificate holder with a new Certificate of NYS Disability and/or Paid Family Leave Benefits Coverage or other authorized proof that the business is complying with the mandatory coverage requirements of the New York State Disability and Paid Family Leave Benefits Law.**

## DISABILITY AND PAID FAMILY LEAVE BENEFITS LAW

### §220. Subd. 8

(a) The head of a state or municipal department, board, commission or office authorized or required by law to issue any permit for or in connection with any work involving the employment of employees in employment as defined in this article, and notwithstanding any general or special statute requiring or authorizing the issue of such permits, shall not issue such permit unless proof duly subscribed by an insurance carrier is produced in a form satisfactory to the chair, that the payment of disability benefits and after January first, two thousand and twenty-one, the payment of family leave benefits for all employees has been secured as provided by this article. Nothing herein, however, shall be construed as creating any liability on the part of such state or municipal department, board, commission or office to pay any disability benefits to any such employee if so employed.

(b) The head of a state or municipal department, board, commission or office authorized or required by law to enter into any contract for or in connection with any work involving the employment of employees in employment as defined in this article and notwithstanding any general or special statute requiring or authorizing any such contract, shall not enter into any such contract unless proof duly subscribed by an insurance carrier is produced in a form satisfactory to the chair, that the payment of disability benefits and after January first, two thousand eighteen, the payment of family leave benefits for all employees has been secured as provided by this article.

## **Exhibit A.8**

***Sample Form CE-200 (Draft 06/02/08) Certificate of  
Attestation of Exemption***



**Workers'  
Compensation  
Board**

**Certificate of Attestation of Exemption  
from New York State Workers' Compensation and/or  
Disability and Paid Family Leave Benefits Insurance Coverage**

***\*\*This form cannot be used to waive the workers' compensation rights or obligations of any party.\*\****

The applicant may use this Certificate of Attestation of Exemption **ONLY** to show a government entity that New York State specific workers' compensation and/or disability and paid family leave benefits insurance is not required. The applicant may **NOT** use this form to show another business or that business's insurance carrier that such insurance is not required.

**Please provide this form to the government entity from which you are requesting a permit, license or contract. This Certificate will not be accepted by government officials one year after the date printed on the form.**

**In the Application of  
(Legal Entity Name and Address):**

MIKE ELSHAZLY & FAMILY INC.  
DBA: QUALITY CONSTRUCTION  
250 CLOCKS BLVD  
MASSAPEQUA, NY 11758  
PHONE: 516-819-6963 FEIN: XXXXX5197

**Business Applying For:  
Contractors License**

**From: SUFFOLK COUNTY CONSUMER AFFIARS**

**Workers' Compensation Exemption Statement:**

The above named business is certifying that it is **NOT REQUIRED TO OBTAIN NEW YORK STATE SPECIFIC WORKERS' COMPENSATION INSURANCE COVERAGE** for the following reason:

The business is a two person owned corporation, with those individuals owning all of the stock and holding all offices of the corporation (each individual must hold an office and own at least one share of stock). Other than the two corporate officers/owners, there are no employees, day labor, leased employees, borrowed employees, part-time employees, other stockholders, unpaid volunteers (including family members) or subcontractors.

**Corporate Officers:** SARA LATHAM President, ADAM ELSHAZLY Vice President

**Disability Benefits Exemption Statement:**

The above named business is certifying that it is **NOT REQUIRED TO OBTAIN NEW YORK STATE STATUTORY DISABILITY AND PAID FAMILY LEAVE BENEFITS INSURANCE COVER** for the following reason:

The business MUST be either: 1) owned by one individual; OR 2) is a partnership (including LLC, LLP, PLLP, RLLP, or LP) under the laws of New York State and is not a corporation; OR 3) is a one or two person owned corporation, with those individuals owning all of the stock and holding all offices of the corporation (in a two person owned corporation each individual must be an officer and own at least one share of stock); OR 4) is a business with no NYS location. In addition, the business does not require disability and paid family leave benefits coverage at this time since it has not employed one or more individuals on at least 30 days in any calendar year in New York State. (Independent contractors are not considered to be employees under the Disability and Paid Family Leave Benefits Law.)

I, SARA LATHAM, am the President with the above-named legal entity. I affirm that due to my position with the above-named business I have the knowledge, information and authority to make this Certificate of Attestation of Exemption. I hereby affirm that the statements made herein are true, that I have not made any materially false statements and I make this Certificate of Attestation of Exemption under the penalties of perjury. I further affirm that I understand that any false statement, representation or concealment will subject me to felony criminal prosecution, including jail and civil liability in accordance with the Workers' Compensation Law and all other New York State laws. By submitting this Certificate of Attestation of Exemption to the government entity listed above I also hereby affirm that if circumstances change so that workers' compensation insurance and/or disability and paid family leave benefits coverage is required, the above-named legal entity will immediately acquire appropriate New York State specific workers' compensation insurance and/or disability and paid family leave benefits coverage and also immediately furnish proof of that coverage on forms approved by the Chair of the Workers' Compensation Board to the government entity listed above.

**SIGN  
HERE**

**Signature:**

**Date:**

**Exemption Certificate Number**

**2021-061918**

**Received**

**September 30, 2021**

**NYS Workers' Compensation Board**

## **Exhibit A.9**

# **EXCESS LINES INSURANCE**



## **Exhibit A.9**

### ***Excess Line Association of New York Part A-Affidavit By Excess Line Broker, Sample Declaration Page with ELANY Stamp and Part C-Affidavit by Producing Broker***

Note: This affidavit is submitted to the Excess Line Association of New York (ELANY) by a New York State licensed excess line Broker along with a copy of the Insured's declaration page from the Insurance contract. ELANY reviews the excess line declarations page and accompanying affidavit to make sure that the Broker is properly licensed, the Insurance company is a New York State eligible excess line Insurer and the Insurance is a kind or type of coverage that can be written in the excess line market. Upon review of these documents, ELANY affixes its stamp on the declarations page of the Insurance contract --- this certifies that ELANY received and reviewed the Insurance documents submitted by the excess line Broker in accordance with Article 21 of the New York State Insurance Law. Insureds should make sure that they receive a copy of the declarations page with the ELANY stamped certification wording affixed to it from their Broker so that they can be assured that the excess line insurance transaction has met all of the requirements for a valid excess line transaction in New York.

# PART A – AFFIDAVIT BY EXCESS LINE BROKER

## 1. EXCESS LINE BROKER INFORMATION

AFFIDAVIT NO. 

<input type="text"/>		License No. Ex - <input type="text"/>	
Name			
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Address	City	State	Zip Code

\* IF THE INSURED IN THIS TRANSACTION WAS REPRESENTED BY A PRODUCING BROKER, THEN A PART C AFFIDAVIT BY THE PRODUCING BROKER MUST BE ATTACHED.

## 2. RISK INFORMATION: THE EXCESS LINE BROKER MUST COMPLETE THIS SECTION!

<input type="text"/>			<input type="text"/>		
Name of the Insured			Location of Risk (if different from insured mailing address)		
<input type="text"/>			<input type="text"/>		
Address			Address		
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
City	State	Zip Code	City	State	Zip Code

<input type="text"/>	<input type="text"/>
Type of Coverage	Type of Coverage Code *
	*(Use ELANY Statistical Code, Add suffix "PG" if this Insurance was placed pursuant to Regulation 134)

<input type="text"/>	<input type="text"/>
Description of Insured Business	Insured Business Description Code

(a) Yes ☐ No ☐ Was this insurance placed pursuant to Regulation 134 governing transactions with risk purchasing groups authorized by the Federal Liability Risk Retention Act of 1986?

(b) If the answer to (a) above is "Yes", indicate   
Name of Purchasing Group

Address  City  State  Zip Code

(c) Yes ☐ No ☐ Did you personally provide a written Notice of Excess Line Placement (Form: NELP/2011) to the insured as required by Section 2118 of the New York Insurance Law and Regulation 41?

(d) Yes ☐ No ☐ Does the insured risk have exposures both inside and outside New York?  
If the answer to (d) is "YES", and 1) **the policy inception date is on or before July 20, 2011** complete and attach **NYSID FORM EL-3**, or 2) **the risk includes exposures outside of the United States**, complete and attach **NYSID FORM EL-4**.

## 3. DECLINATION INFORMATION

(a) Yes ☐ No ☐ Has the Superintendent determined that declinations are not required for this type of Risk? IF ANSWER TO QUESTION (a) IS "YES", SKIP QUESTIONS (b) AND (c) GO ON TO SECTION 4.

(b) Yes ☐ No ☐ Does the insured qualify as an "Exempt Commercial Purchaser" that made a written request consistent with the requirements of New York Insurance Law Section 2118(b)(3)(F)?  
IF ANSWER TO QUESTION (b) is "YES", SKIP QUESTION (c) GO ON TO SECTION 4.

(c) Yes ☐ No ☐ Was the risk described above submitted by the excess line broker to companies: (1) each authorized in New York to write coverages of the kind requested; (2) which the licensee has reason to believe might consider writing the type of coverage or class of insurance involved; and, (3) was such risk declined by each such company? IF ANSWER TO QUESTION (c) is "YES", COMPLETE THE FOLLOWING SCHEDULE.



# PART A – AFFIDAVIT BY EXCESS LINE BROKER

AFFIDAVIT NO. \_\_\_\_\_

## AUTHORIZED COMPANIES DECLINING THE RISK

1. Name of company \_\_\_\_\_ Date of Declin.: \_\_\_\_\_  
NAIC Code \_\_\_\_\_

*The insurer declined to underwrite the risk because:*

1. ☐ Insurer presently lacks adequate capacity to write this risk.
2. ☐ Specific underwriting reason.
3. ☐ Other (Specify) \_\_\_\_\_

Affiliation of Representative: ☐ Company Employee ☐ Agent ☐ Other (specify) \_\_\_\_\_

\_\_\_\_\_  
Name of Representative Declining Risk

*I believed this insurer would consider underwriting this risk because:*

- ☐ Recent acceptance by the insurer of a risk, requiring that type of coverage or class of insurance.
- ☐ Advertising by the insurer or its agent indicating it entertains that type of risk/coverage.
- ☐ Media communications (Newspapers, Trade Magazines, Radio) which indicate the insurer will underwrite that type of coverage.
- ☐ Communications with other professionals, such as brokers, agents, risk managers, insurance department or ELANY Personnel indicating the insurer entertains such risks.
- ☐ Any other valid basis you can document. \_\_\_\_\_

2. Name of Company \_\_\_\_\_ Date Declin.: \_\_\_\_\_  
NAIC Code \_\_\_\_\_

*The insurer declined to underwrite the risk because:*

1. ☐ Insurer presently lacks adequate capacity to write this risk.
2. ☐ Specific underwriting reason.
3. ☐ Other (Specify) \_\_\_\_\_

Affiliation of Representative: ☐ Company Employee ☐ Agent ☐ Other (specify) \_\_\_\_\_

\_\_\_\_\_  
Name of Representative Declining Risk

*I believed this insurer would consider underwriting this risk because:*

- ☐ Recent acceptance by the insurer of a risk, requiring that type of coverage or class of insurance.
- ☐ Advertising by the insurer or its agent indicating it entertains that type of risk/coverage.
- ☐ Media communications (Newspapers, Trade Magazines, Radio) which indicate the insurer will underwrite that type of coverage.
- ☐ Communications with other professionals, such as brokers, agents, risk managers, insurance department or ELANY Personnel indicating the insurer entertains such risks.
- ☐ Any other valid basis you can document. \_\_\_\_\_

3. Name of Company \_\_\_\_\_ Date Declin.: \_\_\_\_\_  
NAIC Code \_\_\_\_\_

*The insurer declined to underwrite the risk because:*

1. ☐ Insurer presently lacks adequate capacity to write this risk.
2. ☐ Specific underwriting reason.
3. ☐ Other (Specify) \_\_\_\_\_

Affiliation of Representative: ☐ Company Employee ☐ Agent ☐ Other (specify) \_\_\_\_\_

\_\_\_\_\_  
Name of Representative Declining Risk

*I believed this insurer would consider underwriting this risk because:*

- ☐ Recent acceptance by the insurer of a risk, requiring that type of coverage or class of insurance.
- ☐ Advertising by the insurer or its agent indicating it entertains that type of risk/coverage.
- ☐ Media communications (Newspapers, Trade Magazines, Radio) which indicate the insurer will underwrite that type of coverage.
- ☐ Communications with other professionals, such as brokers, agents, risk managers, insurance department or ELANY Personnel indicating the insurer entertains such risks.
- ☐ Any other valid basis you can document. \_\_\_\_\_

# PART A – AFFIDAVIT BY EXCESS LINE BROKER

AFFIDAVIT NO. \_\_\_\_\_

## 4. PLACEMENT INFORMATION: UNAUTHORIZED COMPANIES PROVIDING COVERAGE

POLICY LIMITS OF PRINCIPAL INSURANCE COVERAGE	
INCEPTION DATE OF POLICY	
TERM IN MONTHS	

NAME OF COMPANY	CODE	PERCENT OF TOTAL ACCEPTED	TOTAL EXCESS LINE PREMIUM**

\*\* For policies incepting on and before July 20, 2011, report only the New York portion of the premium if the risk has exposures both inside and outside New York. For policies incepting on and after July 21, 2011 the total excess line premium is the gross written premium.

### AFFIRMATION

I, \_\_\_\_\_, am the licensee or sublicensee of the named broker in Section 1 of this affirmation and I hereby affirm under penalties of perjury that:

- 1) The "insured's home state" as defined in New York Insurance Law Section 2101 (x)(3) is New York State.
- 2) all of the information contained herein is true to the best of my knowledge and belief,
- 3) an affirmation by the producing broker is submitted herewith if a producing broker also represented the insured in placing the risk described herein,
- 4) a copy of the notice of excess line placement was mailed to the insured and a copy is submitted herewith, and
- 5) every policy or contract of insurance covering the risk described herein was procured by me from the unauthorized Insurers identified herein in full compliance with all applicable provisions of the New York Insurance Law and Title 11 of the New York Code of Rules and Regulations.

Signature \_\_\_\_\_ Date \_\_\_\_\_



**ALLIED WORLD NATIONAL ASSURANCE COMPANY**

160 Federal Street, 6th Floor, Boston, MA 02110 · Tel. (857) 288-6000 · Fax (617) 556-8060

(hereinafter called the Company)

**COMMERCIAL PROPERTY POLICY  
DECLARATIONS**

**POLICY NUMBER:**

**RENEWAL OF:**

**ITEM 1.**

**Named Insured:**

**Address:**

**ITEM 2. Policy Period:**

**From:**

**To:**

at 12:01 A.M. Standard Time at the location of property insured as stated in the Schedule of Locations.

**ITEM 3. Limit of Insurance:**

See attached Forms and Endorsements, for Sublimits which may apply to these or to other Perils or Coverages.

**Premium, all Coverages Excluding Terrorism:**

\$

**Premium, Terrorism Coverage:**

\$

**Total Premium, All Coverages:**

\$

In the event of cancellation of this policy by the Insured, a minimum premium of \$ shall become earned, any provision of the policy to the contrary notwithstanding.

Failure of the Insured to make timely payment of premium shall be considered a request by the Insured for the Company to cancel on the Insured's behalf. In the event of such cancellation for non-payment of premium, the minimum earned premium shall be due and payable; provided, however, such cancellation shall be rescinded if the Insured remits and the Company receives the full policy premium within 10 days after the date of issuance of the cancellation notice. Such remittance and acceptance by the Company shall not effect the minimum earned premium provision of this endorsement. In the event of any other cancellation by the Company, the earned premium shall be computed pro-rata, not subject to the minimum earned premium.

**ITEM 4. Perils:** All Risk of Direct Physical Loss or Damage Including Flood and Earthquake, Excluding Terrorism and Boiler & Machinery

**ITEM 5. Description of Property Covered:** Real and Personal Property, Business Interruption, Extra Expenses, Loss of Rents

**ITEM 6. Coinsurance:** NIL

**ITEM 7. Forms Attached:** See attached Forms Schedule

"The Insurer(s) named herein is (are) not licensed by the State of New York, not subject to its supervision, and in the event of the insolvency of the insurer(s), not protected by the New York State Security Funds. The policy may not be subject to all of the regulations of the Department of Financial Services pertaining to policy forms."

NPDP 0001 0609



This is to certify that Excess Line Association of New York received and reviewed the attached insurance document in accordance with Article 21 of the New York State Insurance Law

12/19/2019  
Id:1887070624

THE INSURER(S) NAMED HEREIN IS (ARE) NOT LICENSED BY THE STATE OF NEW YORK, NOT SUBJECT TO ITS SUPERVISION, AND IN THE EVENT OF THE INSOLVENCY OF THE INSURER(S), NOT PROTECTED BY THE NEW YORK STATE SECURITY FUNDS. THE POLICY MAY NOT BE SUBJECT TO ALL OF THE REGULATIONS OF THE DEPARTMENT OF FINANCIAL SERVICES PERTAINING TO POLICY FORMS.

# PART C – AFFIDAVIT BY PRODUCING BROKER

## 1. PRODUCING BROKER INFORMATION

AFFIDAVIT NO.

<div style="border: 1px solid black; height: 20px; margin-bottom: 5px;"></div> <div style="border: 1px solid black; height: 20px; margin-bottom: 5px;"></div>	License No. BR-	<div style="border: 1px solid black; height: 20px; margin-bottom: 5px;"></div> <div style="border: 1px solid black; height: 20px; margin-bottom: 5px;"></div>
Name		City
Address	State	Zip Code

## 2. RISK INFORMATION:

Name of the Insured

(The name of the insured must be precisely the same in this affidavit and the declarations page, binder, cover note or confirmation of coverage.)

## 3. DISCLOSURE INFORMATION

Yes ☐ No ☐ Did you personally provide a written Notice of Excess Line Placement (Form: NELP/2011) to the insured as required by Section 2118 of the New York Insurance Law and Regulation 41?

## 4. DECLINATION INFORMATION

- (a) Yes ☐ No ☐ Has the Superintendent determined that declinations are not required for this type of risk? IF ANSWER TO QUESTION (a) IS "YES", SKIP QUESTIONS (b) AND (c) GO ON TO THE AFFIRMATION SECTION.
- (b) Yes ☐ No ☐ Does the insured qualify as an "Exempt Commercial Purchaser" that made a written request consistent with the requirements of New York Insurance Law Section 2118(b)(3)(F)? IF ANSWER TO QUESTION (b) IS "YES", SKIP QUESTION (c) GO ON TO THE AFFIRMATION SECTION.
- (c) Yes ☐ No ☐ Was the risk described above submitted by the producing broker to companies: (1) each authorized in New York to write coverages of the kind requested; (2) which the licensee has reason to believe might consider writing the type of coverage or class of insurance involved; and, (3) was such risk declined by each such company?  
If the answer to QUESTION (c) above is "YES", COMPLETE THE FOLLOWING SCHEDULE:

### AUTHORIZED COMPANIES DECLINING THE RISK

1. Name of Company  Date of Declin.:   
NAIC Code

*The insurer declined to underwrite the risk because:*

1. ☐ Insurer presently lacks adequate capacity to write this risk.
2. ☐ Specific underwriting reason.
3. ☐ Other (Specify) \_\_\_\_\_

Affiliation of Representative: ☐ Company Employee ☐ Agent ☐ Other (specify) \_\_\_\_\_

\_\_\_\_\_  
Name of Representative Declining Risk

*I believed this insurer would consider underwriting this risk because:*

- ☐ Recent acceptance by the insurer of a risk, requiring that type of coverage or class of insurance.
- ☐ Advertising by the insurer or its agent indicating it entertains that type of risk/coverage.
- ☐ Media communications (Newspapers, Trade Magazines, Radio) which indicate the insurer will underwrite that type of coverage.
- ☐ Communications with other professionals, such as brokers, agents, risk managers, insurance department or ELANY personnel indicating the insurer entertains such risks.
- ☐ Any other valid basis you can document.

## PART C – AFFIDAVIT BY PRODUCING BROKER

AFFIDAVIT NO. \_\_\_\_\_

### AUTHORIZED COMPANIES DECLINING THE RISK

2. Name of Company \_\_\_\_\_ Date Declin.: \_\_\_\_\_  
NAIC Code \_\_\_\_\_

*The insurer declined to underwrite the risk because:*

1. ☐ Insurer presently lacks adequate capacity to write this risk.
2. ☐ Specific underwriting reason.
3. ☐ Other (Specify) \_\_\_\_\_

Affiliation of Representative: ☐ Company Employee ☐ Agent ☐ Other (specify) \_\_\_\_\_

\_\_\_\_\_  
Name of Representative Declining Risk

*I believed this insurer would consider underwriting this risk because:*

- ☐ Recent acceptance by the insurer of a risk, requiring that type of coverage or class of Insurance.
- ☐ Advertising by the insurer or its agent indicating it entertains that type of risk/coverage.
- ☐ Media communications (Newspapers, Trade Magazines, Radio) which indicate the insurer will underwrite that type of coverage.
- ☐ Communications with other professionals, such as brokers, agents, risk managers, insurance department or ELANY Personnel indicating the insurer entertains such risks.
- ☐ Any other valid basis you can document. \_\_\_\_\_

3. Name of Company \_\_\_\_\_ Date Declin.: \_\_\_\_\_  
NAIC Code \_\_\_\_\_

*The insurer declined to underwrite the risk because:*

1. ☐ Insurer presently lacks adequate capacity to write this risk.
2. ☐ Specific underwriting reason.
3. ☐ Other (Specify) \_\_\_\_\_

Affiliation of Representative: ☐ Company Employee ☐ Agent ☐ Other (specify) \_\_\_\_\_

\_\_\_\_\_  
Name of Representative Declining Risk

*I believed this insurer would consider underwriting this risk because:*

- ☐ Recent acceptance by the insurer of a risk, requiring that type of coverage or class of Insurance.
- ☐ Advertising by the insurer or its agent indicating it entertains that type of risk/coverage.
- ☐ Media communications (Newspapers, Trade Magazines, Radio) which indicate the insurer will underwrite that type of coverage.
- ☐ Communications with other professionals, such as brokers, agents, risk managers, insurance department or ELANY Personnel indicating the insurer entertains such risks.
- ☐ Any other valid basis you can document. \_\_\_\_\_

### AFFIRMATION

I, \_\_\_\_\_, am the licensee or sublicensee of the named broker  
in Section 1 of this affirmation and I hereby affirm under penalties of perjury that all of the  
information contained herein is true to the best of my knowledge and belief.

Signature of Affiant \_\_\_\_\_ Date \_\_\_\_\_

**PART V - EXHIBIT B**  
**GUIDELINES FOR SUBMITTING EVIDENCE**  
**OF INSURANCE**

## **Exhibit B.1. Guidelines for Submitting Evidence of Insurance to AGENCY**

## **Exhibit B.1.**

### **Guidelines for Submitting Evidence of Insurance to AGENCY**

1. All evidence of insurance (except Railroad Protective Liability) **MUST be submitted to AGENCY on a Certificate of Insurance, with the Supplemental Insurance Certificate and NYS-required Workers' Compensation/NYS Disability Insurance forms** or by a certified copy **of the actual policy(ies)** as required by the Agency. If by certificate, the form must contain the following:

- **MUST be signed** by an authorized representative of the insurance carrier or producer.
- **MUST** disclose any **deductible, self-insured retention or aggregate** limit.
- **MUST** indicate the **Additional Insureds** and **Named Insureds** on the form.
- **MUST make reference to the contract or agreement number** on the front after contract number, as applicable.

2. For Railroad Protective Liability insurance:

- A Certificate of Insurance and **a detailed binder** pending issuance of the policy, or a copy of the original policy on an ISO-RIMA or equivalent form **MUST be submitted**; and
- Definition of Physical damage to property must be amended to mean direct and accidental loss of or damage to "all property of any Named Insured and all property in any Named Insured's care, custody or control"

3. Evidence of Workers' Compensation and Disability Benefits must be submitted on forms specified by the NYS Workers' Compensation Board – see attached.

4. **Original signed documents are required** for all of the above. Photocopied signatures are not acceptable, but electronic documents distributed by the Insurance Carrier and/or Insurance Agent are acceptable. Faxed documents must be followed up with originals.

5. Certificate issue date must be within 30 days of submittal.

[**Note:** These are general guidelines applicable to most agreements. Kindly refer to the actual agreement for specific requirements].



## **Exhibit B.2**

### **Sample Letter**

**[Note: The following is a Sample Letter only. Each Agency should develop its own written communication based on the Agency's specific legal and procedural requirements].**

**[Date]**

**[Third Party Name]**

**[Third-Party Address]**

**Re: [Agreement # 123456]**

Dear Sir/Madam:

Please be advised that before **[select one of the following:]**

- **[Agency name]** can issue you a contract for your services,
- **[Agency name]** can issue an award letter for your services,
- you can begin work in connection with the above-referenced agreement,

we must receive a certificate of insurance from your insurance agent evidencing coverage as required by the agreement.

The agreement requires that you provide such evidence on a Certificate of Insurance accompanied by the Supplemental Insurance Certificate. Attached is a copy of said forms as well as Guidelines to assist your agent in filling out the forms.

Please forward the attached Certificate of Insurance and accompanying Supplemental Insurance Certificate to your insurance agent for completion. To assist in the smooth handling of this matter, it is requested that you also forward your agent a copy of the attached Guidelines, along with a copy of the insurance requirements contained in your agreement.

The completed certificate should be sent promptly to **[fill in appropriate name & address]**.

Sincerely,

**[Contract Manager]**

**PART V - EXHIBIT C**  
**AGENCY PROCEDURES FOR TRACKING**  
**AND APPROVAL AND AGENCY INSURANCE**  
**APPROVAL FORM**

## **Exhibit C.1.**

### **SAMPLE AGENCY Procedure for Tracking & Approving Certificates of Insurance**

**[Note: Agencies should review and amend the  
SAMPLE procedure below to conform with their  
own internal policies and procedures]**

## **SAMPLE “AGENCY” Procedure for Tracking & Approving Certificates of Insurance**

**[Note: Agencies should review and amend the SAMPLE procedure below to conform with their own internal policies and procedures]**

### **New Contracts**

1. If, prior to the submission of a request for approval of the certificate of insurance, any documentation (i.e. entry permit, award letter, license agreement, etc.) is received by the Insurance Analyst in connection with a new contract, agreement, entry permit, etc. which indicates that a Contractor has already been selected to perform the work, the Insurance Analyst shall:

- a. enter the relevant data into the certificate tracking system indicating that the agency has not received proof of insurance; and
- b. contact the Contractor and Contract Manager (either by phone or letter) to advise that proof of insurance has not been received.

If any other documentation is received prior to the submission of a request for approval of the certificate of insurance, the Insurance Analyst shall set it aside in a file with no action taken until the request for approval is received.

2. Upon receipt of the —AGENCY‖ Insurance Approval Form from a submitting party (i.e. Contract Manager), the Insurance Analyst shall review the papers and provide a response within 5 days. The Approval Form must contain the relevant certificate of insurance and the contractual insurance and indemnification language.

3. If the certificate is satisfactory, the Insurance Analyst shall:

- a. sign the approval section of the Form;
- b. return the original Form to the submitting party (either by fax or interoffice mail);
- c. enter the relevant data into the certificate tracking system within 30 days; and
- d. set up a file for the contract/agreement/permit.

4. If the certificate is not satisfactory and an immediate approval is required, the Insurance Analyst shall contact the submitting party, advise him or her that the certificate is not satisfactory and promptly contact the Contractor or the insurance agent in order to obtain the correct certificate. Upon receipt of an acceptable certificate, the Insurance Analyst shall follow Step 3 above.

5. If the certificate is not satisfactory and an immediate approval is not required, the Insurance Analyst shall enter the relevant data into the certificate tracking system, using the appropriate unacceptable codes to indicate the deficiencies of the certificate. An unacceptable letter shall be sent to the Contractor with copies to the

submitting party, (i.e. Contract Manager). Upon receipt of an acceptable certificate, the Insurance Analyst shall follow Step 3 above.

## **Exhibit C. 2. Agency Insurance Approval Form**

## **AGENCY INSURANCE APPROVAL FORM**

### **Risk Management Review Checklist for Insurance Certificates Construction, Professional, or Purchasing Contracts**

Name of Contractor/Professional/Vendor \_\_\_\_\_

Project Name \_\_\_\_\_

Contract # \_\_\_\_\_ Project # \_\_\_\_\_ Date Contract Rec'd in RM \_\_\_\_\_

Insurance: Construction Contracts

Insurance Requirements - Standard per Program Yes \_\_\_\_\_ No \_\_\_\_\_

(Renewal Certificates) Yes \_\_\_\_\_ No \_\_\_\_\_

Insurance Carriers Licensed in NYS

• Carrier A	Yes _____ No _____ Rating _____
• Carrier B	Yes _____ No _____ Rating _____
• Carrier C	Yes _____ No _____ Rating _____
• Carrier D	Yes _____ No _____ Rating _____
• Carrier E	Yes _____ No _____ Rating _____
• Workers' Comp Carrier	Yes _____ No _____ Rating _____
• Disability Carrier	Yes _____ No _____ Rating _____

**Per the Certificate(s) provided, the following insurance is in compliance with the contract documents:**

	<u><b>Date</b></u>	<u><b>Initials</b></u>
General Liability	_____	_____
Additional Insureds are appropriately named		
Occurrence based policy		
Limits are adequate		
Automobile Liability	_____	_____
Excess/Umbrella Liability	_____	_____
Workers' Compensation	_____	_____
Disability	_____	_____
Builder's Risk	_____	_____
Pollution/Asbestos	_____	_____
Limits are in addition to required CGL/Excess Limits		
Professional Liability Per Claim \$ _____ Deductible \$ _____	_____	_____
Other	_____	_____

\_\_\_\_\_  
Name (Insurance Analyst)

\_\_\_\_\_  
Date Reviewed



**EXHIBIT D**  
**USE OF UNMANNED AIRCRAFT SYSTEMS**  
**PROCEDURE**

## PROCEDURE

### Use of Unmanned Aircraft Systems (Drones)

---

**Issued By:**

**Procedure Owner:**

**Approved By:**

---

## PURPOSE

The purpose of this Unmanned Aircraft Systems (UAS) procedure is to establish oversight requirements for UAS, commonly known as drones. This procedure sets minimum requirements for operating UAS on projects for the purposes of design or construction, including but not limited to photographs or aerial videography for inspection, investigation, testing, or measurement. Anyone who seeks to operate a UAS at any project location or for any other purpose related to a contract must receive written approval in advance in accordance with this procedure.

---

## DEFINITIONS

**Accident** - An unexpected incident resulting in Personal Injury or property damage.

**Adverse Event** - Any incident that may potentially cause an Accident, including near misses, non-damage collision incidents, lost link, fly away, etc.

**Federal Aviation Administration (FAA)** -A division of the Department of Transportation that inspects and rates civilian aircraft and pilots, enforces the rules of air safety, and installs and maintains air-navigation and traffic-control facilities.

**Locations Where There is a Reasonable Expectation of Privacy** - Locations where there is an objective expectation of privacy. Examples include but are not limited to restrooms, locker rooms, student housing, hotel rooms, and health treatment and medical facilities.

**Operator** - The individual who exercises authority over initiating, conducting or terminating a flight of a UAS. If flying under FAA Part 107, the person operating the drone could be flying under the authority of the Remote Pilot in Command (RPIC).

**Remote Pilot in Command (RPIC)** – A person who has the final authority and responsibility for the operation and safety of the flight; has been designated as RPIC

before or during the flight; and holds the appropriate certificate, rating, and/or Endorsement, if appropriate, for the conduct of the flight.

**Unmanned Aircraft System (UAS)** - An aircraft and its associated elements (including communication links and the components that control the unmanned aircraft) operated without the possibility of direct human intervention from within or on the aircraft.

**Temporary Flight Restrictions (TFR)** - The term Temporary Flight Restriction (TFR) means a certain area of airspace where air travel is limited by the FAA because of a temporary hazardous condition, a security-related event or other special situations.

---

## UNITS INVOLVED

### EXAMPLES:

Procurement - Construction Contracts  
Planning, Design and Quality Assurance  
Construction Services  
Insurance  
Counsel's Office

---

## FORMS

UAS Request Form – Safety and Privacy  
Practices Agreement  
UAS Post Flight Report

---

## PROCEDURE

- 1) All Contractors, consultants or vendors seeking to operate a UAS on a project must first obtain a UAS Request Form and Safety and Privacy Practices Agreement from the design phase manager or construction phase manager and submit the completed form to the **[Agency]**, with proof of Insurance for review and approval, at least fourteen (14) days calendar in advance of operation.
- 2) The **[Agency]** reviews the request. If acceptable, the **[Agency]** processes the request and notifies the applicant if the request is approved, denied, or will require additional information. The **[Agency]** reviews the request for:
  - Compliance with FAA regulations
  - Compliance with Insurance requirements;

- Impacts to public safety or privacy and compliance with Temporary Flight Restrictions;
  - Relative need to completion of project goals.
- 3) Once approved by the **[Agency]**, the UAS Operator must follow all requirements of applicable laws and regulations and submit to the **[Agency]** a completed UAS Post Flight Report within 72 hours of operation completion.
  - 4) Any Adverse Event or Accident must be reported to the **[Agency]**, in accordance with the terms of the contract, and to the appropriate regulatory and law enforcement agencies immediately, if applicable.
  - 5) Any UAS operated on projects must be registered in accordance with all applicable laws, regulations, and requirements.
  - 6) UAS Operators must have Aircraft Liability Insurance covering the liability of the Operator for bodily injury, property damage and Personal Injury arising from all operations in the amount of \$1,000,000 per Occurrence and naming the **[Agency]**, the client, if applicable, and the Contractor/consultant/vendor, if applicable, as Additional Insureds. A Certificate of Insurance demonstrating proof of coverage must be submitted to the **[Agency]**.

---

## HISTORY

Issued:

## UAS REQUEST FORM - SAFETY AND PRIVACY PRACTICES AGREEMENT

Please complete this form and return it to the *[Agency]* at least 14 calendar days prior to the requested UAS operation.

### Section 1: Requestor Information

Name:	
Firm Name:	
Address:	
Email:	
Phone:	

### Section 2: Project Information

Client:	
Project Name/#:	
Location:	
DPM/CPM:	
Purpose:	

### Section 3: Operator Information

Name:	
Address:	
Email:	
Phone:	
Pilot License#:	*

\*If operating under the authority of a RPIC, indicate the RPIC name and License# in this box.

### Section 4: Aircraft Information

--	--



### **Section 5: Flight Details**

Date:	
Time:	
Location:	
Altitude:	
Flying over people?	If yes, please attach copy of FAA waiver.
Operating under COA/333/Part 107	If yes, please attach a copy.
Flight Details:	

### **Section 6: Safety and Privacy Practices Agreement**

I, the undersigned, hereby agree that I have read and will adhere to the following safety and privacy practices throughout the duration of the above-mentioned UAS. I further acknowledge that I am at least 18 years old and legally competent to sign this agreement.

Please initial next to each safety and privacy practice and sign on the signature line below.

- All operations must comply with FAA regulations, State and local laws/ordinances, policies and the contract terms or policies of the **[Agency]**. Operator understands and acknowledges that it is the responsibility of the Operator to adhere to this requirement.
- UAS must not be used to monitor or record activities in Locations Where There is a Reasonable Expectation of Privacy.
- UAS must not be used for any unapproved recordings on projects or for any unlawful purpose.
- UAS shall not exceed an altitude of 400 feet above ground level. \*
- UAS must always be within the Operator's line-of-sight. \*
- UAS shall not exceed speeds of more than 20 miles per hour (mph).
- UAS shall not interfere with manned aircraft.
- UAS shall not fly over people. \*
- Operator shall reasonably attempt to notify people in the area about the operation.
- Operator shall not operate the UAS from moving vehicles.
- Operator shall not recklessly operate the UAS.
- Operator shall not operate the UAS while under the influence of drugs or alcohol.
- Operation shall only occur during daylight hours, unless the Operator has received FAA authorization to operate at night, and such operation is in accordance with the **[Agency's]** policies and the policies of the client. \*
- Operation shall not occur if the FAA issues any Temporary Flight Restrictions for the airspace over the flight location.
- Operator shall submit a UAS Post Flight Report to the **[Agency]** within 72 hours of the operation.
- Operator and Contractor/Consultant will immediately notify the **[Agency]**, and the appropriate regulatory and law enforcement agencies of any Accident or Adverse Event during the operation.
- Operator will assist with any analysis, investigation and/or remediation effort following an Accident or Adverse Event.
- Operator acknowledges that any photos, video, test/inspection samples or measurements taken during the operation are the exclusive intellectual property of the **[Agency]** and shall not be shared, used or otherwise disseminated without the express, written consent of the **[Agency]**.



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- 
- Operator indemnifies and holds the **[Agency]**, the Client, as applicable, and the People of the State of New York harmless from any and all damages, expenses, Claims, judgments, liabilities, losses, awards and costs which may be assessed in any action for or arising out of or related to the UAS operation.
  - Operator shall maintain and have appropriate Insurance coverage during the UAS flight operations dates and shall provide proof of such Insurance with this agreement.
  - Operator shall fly in Class G Airspace.
  - Operator shall have in place and follow a pre-flight checklist, along with an emergency contingency plan.
  - Operator shall not launch from or land on private property without obtaining landowner permission prior to flight.

\*May apply for a waiver for:

- Class G airspace
- VLOS
- 400 ft. altitude (FAA Part 107.51 – RPIC can fly up to 400 ft. above a structure's immediate uppermost limit)
- Night flight
- Flying over people

## Section 7: Operator's Signature

---

Printed Name:

---

Signature:

---

Date:

## Section 8: Review & Approval/Denial

Reviewed By:			
Request:	Approved <input type="checkbox"/>	Denied <input type="checkbox"/>	Date:

Requirements for operation are listed below and must be observed. A copy of this approval must be in the possession of the Operator at all times during UAS operation and must be presented to any official or representative with jurisdiction over the activity upon request. If not approved, a summary of the decision is outlined below.

### ***UNMANNED AIRCRAFT SYSTEM (UAS) POST-FLIGHT REPORT***

Please complete this form and return it to the *[Agency]* within 72 hours of the UAS operation or immediately if reporting an Accident or Adverse Event.

#### **Section 1: Operator Information**

Name:	
Address:	
Email:	
Phone:	
Pilot License#:	*

\*If operating under the authority of a RPIC, indicate the RPIC name and License# in this box.

#### **Section 2: Flight Details**

Date:	
Time:	
Location:	
Altitude:	
Flying over people?	If yes, attach copy of FAA waiver.
Operating under COA/333/Part 107	If yes, please attach a copy.

Was there any deviation from the original UAS request (date, duration, location, etc.)?

☐ No   ☐ Yes (describe)

#### **Section 3: Accidents or Adverse Events**

Please indicate if any of the following occurred:

Equipment Malfunctions:	Lost Link Events:	Other Accident/Mishap:
<input type="checkbox"/> On-Board Flight Controls <input type="checkbox"/> Navigation System <input type="checkbox"/> Powerplant failure in flight <input type="checkbox"/> Fuel System failure <input type="checkbox"/> Electrical System failure <input type="checkbox"/> Control station failure <input type="checkbox"/> In-flight fire <input type="checkbox"/> Aircraft collision involving another aircraft <input type="checkbox"/> Deviation from COA <input type="checkbox"/> Other: _____ _____ <input type="checkbox"/> None	<input type="checkbox"/> Lost link of operator control <input type="checkbox"/> Lost link of ground telemetry <input type="checkbox"/> Lost link of payload telemetry <input type="checkbox"/> Fly-away resulting in flight termination <input type="checkbox"/> Execution of preplanned lost link procedure <input type="checkbox"/> Execution of unplanned lost link procedure <input type="checkbox"/> Other:- _____ _____ _____ <input type="checkbox"/> None	<input type="checkbox"/> Bird Attack/Interference <input type="checkbox"/> Damage to property other than UAS <input type="checkbox"/> Substantial damage to UAS <input type="checkbox"/> Total loss of UAS <input type="checkbox"/> Serious injury <input type="checkbox"/> Fatal injury <input type="checkbox"/> Other: _____ _____ <input type="checkbox"/> None

**Section 4: Operator’s Signature**

\_\_\_\_\_  
Printed Name:

\_\_\_\_\_  
Signature:

\_\_\_\_\_  
Date:

**Section 8: Receipt**

Received By:	
Date:	

## **PART V - EXHIBIT E-REFERENCE MATERIALS**

Requirements for  
Businesses Applying for Government Permits,  
Licenses, or Contracts  
<http://www.wcb.ny.gov/content/main/Employers/requirements-businesses-applying-government-permits-licenses-contracts.pdf>

Insurance Services Office, Inc. (ISO) Forms:

1. CG 00 01 01 96 Commercial General Liability Coverage Form
2. CG 20 10 11 85 Additional Insured – Owners, Lessees or Contractors – (Form B)
3. CG 22 79 04 13 Exclusion – Contractors – Professional Liability Insurance
4. CG 22 80 04 13 Limited Exclusion – Contractors Professional Liability Insurance
5. CG 25 03 05 09 Designated Construction Project(s) General Aggregate Limit
6. CA 01 12 01 21 New York Changes in Business Auto, and Motor Carrier Coverage Forms
7. CG 00 14 04 13 Special Protective and Highway Liability Policy—New York Department of Transportation
8. CG 00 09 04 13 Owners and Contractors Protective Liability Coverage Form—Coverage for Operations of Designated Contractor
9. CG 02 24 10 93 Earlier Notice of Cancellation Provided By US (For use with CGL, Liquor, Pollution and Products Policies)
10. CG 20 38 12 19 Additional Insured-Owners, Lessees or Contractors-Automatic Status for Other Parties When Required In Written Construction Agreement
11. CG 20 10 12 19 Additional Insured – Owners, Lessees or Contractors – Scheduled Person or Organization
12. CG 20 37 12 19 Additional Insured - Owners, Lessees or Contractors – Completed Operations
13. CA 20 48 10 13 Designated Insured for Covered Autos Liability Coverage
14. CG 24 26 04 13 Amendment of Insured Contract Definition
15. CP 10 30 09 17 Causes of Loss—Special Form
16. CA 00 05 03 10 Garage Coverage Form

Other Forms:

1. MCS-90 Endorsement Endorsement for Motor Carrier Policies of Insurance for Public Liability under Sections 29 and 30 of the Motor Carrier Act of 1980

# COMMERCIAL GENERAL LIABILITY COVERAGE FORM

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations, and any other person or organization qualifying as a Named Insured under this policy. The words "we", "us" and "our" refer to the company providing this insurance.

The word "insured" means any person or organization qualifying as such under WHO IS AN INSURED (SECTION II).

Other words and phrases that appear in quotation marks have special meaning. Refer to DEFINITIONS (SECTION V).

## SECTION I – COVERAGES

### COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY

#### 1. Insuring Agreement

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury" or "property damage" to which this insurance does not apply. We may, at our discretion, investigate any "occurrence" and settle any claim or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in LIMITS OF INSURANCE (SECTION III); and
- (2) Our right and duty to defend end when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A or B or medical expenses under Coverage C.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under SUPPLEMENTARY PAYMENTS – COVERAGES A AND B.

- b. This insurance applies to "bodily injury" and "property damage" only if:

- (1) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory"; and
- (2) The "bodily injury" or "property damage" occurs during the policy period.

- c. Damages because of "bodily injury" include damages claimed by any person or organization for care, loss of services or death resulting at any time from the "bodily injury".

#### 2. Exclusions

This insurance does not apply to:

##### a. Expected or Intended Injury

"Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" resulting from the use of reasonable force to protect persons or property.

##### b. Contractual Liability

"Bodily injury" or "property damage" for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages:

- (1) That the insured would have in the absence of the contract or agreement; or
- (2) Assumed in a contract or agreement that is an "insured contract", provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement. Solely for the purposes of liability assumed in an "insured contract", reasonable attorney fees and necessary litigation expenses incurred by or for a party other than an insured are deemed to be damages because of "bodily injury" or "property damage", provided:
  - (a) Liability to such party for, or for the cost of, that party's defense has also been assumed in the same "insured contract"; and

- (b) Such attorney fees and litigation expenses are for defense of that party against a civil or alternative dispute resolution proceeding in which damages to which this insurance applies are alleged.

**c. Liquor Liability**

"Bodily injury" or "property damage" for which any insured may be held liable by reason of:

- (1) Causing or contributing to the intoxication of any person;
- (2) The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or
- (3) Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

This exclusion applies only if you are in the business of manufacturing, distributing, selling, serving or furnishing alcoholic beverages.

**d. Workers Compensation and Similar Laws**

Any obligation of the insured under a workers compensation, disability benefits or unemployment compensation law or any similar law.

**e. Employer's Liability**

"Bodily injury" to:

- (1) An "employee" of the insured arising out of and in the course of:
  - (a) Employment by the insured; or
  - (b) Performing duties related to the conduct of the insured's business; or
- (2) The spouse, child, parent, brother or sister of that "employee" as a consequence of paragraph (1) above.

This exclusion applies:

- (1) Whether the insured may be liable as an employer or in any other capacity; and
- (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

This exclusion does not apply to liability assumed by the insured under an "insured contract".

**f. Pollution**

- (1) "Bodily injury" or "property damage" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of pollutants:

- (a) At or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to, any insured;
- (b) At or from any premises, site or location which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste;
- (c) Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for any insured or any person or organization for whom you may be legally responsible; or
- (d) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations:
  - (i) If the pollutants are brought on or to the premises, site or location in connection with such operations by such insured, contractor or subcontractor; or
  - (ii) If the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of pollutants.

Subparagraph (d)(i) does not apply to "bodily injury" or "property damage" arising out of the escape of fuels, lubricants or other operating fluids which are needed to perform the normal electrical, hydraulic or mechanical functions necessary for the operation of "mobile equipment" or its parts, if such fuels, lubricants or other operating fluids escape from a vehicle part designed to hold, store or receive them. This exception does not apply if the fuels, lubricants or other operating fluids are intentionally discharged, dispersed or released, or if such fuels, lubricants or other operating fluids are brought on or to the premises, site or location with the intent to be discharged, dispersed or released as part of the operations being performed by such insured, contractor or subcontractor.



Subparagraphs **(a)** and **(d)(i)** do not apply to "bodily injury" or "property damage" arising out of heat, smoke or fumes from a hostile fire.

As used in this exclusion, a hostile fire means one which becomes uncontrollable or breaks out from where it was intended to be.

- (2)** Any loss, cost or expense arising out of any:
- (a)** Request, demand or order that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of pollutants; or
  - (b)** Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of pollutants.

Pollutants means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

**g. Aircraft, Auto or Watercraft**

"Bodily injury" or "property damage" arising out of the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft owned or operated by or rented or loaned to any insured. Use includes operation and "loading or unloading".

This exclusion does not apply to:

- (1)** A watercraft while ashore on premises you own or rent;
- (2)** A watercraft you do not own that is:
  - (a)** Less than 26 feet long; and
  - (b)** Not being used to carry persons or property for a charge;
- (3)** Parking an "auto" on, or on the ways next to, premises you own or rent, provided the "auto" is not owned by or rented or loaned to you or the insured;

- (4)** Liability assumed under any "insured contract" for the ownership, maintenance or use of aircraft or watercraft; or

- (5)** "Bodily injury" or "property damage" arising out of the operation of any of the equipment listed in paragraph **f.(2)** or **f.(3)** of the definition of "mobile equipment".

**h. Mobile Equipment**

"Bodily injury" or "property damage" arising out of:

- (1)** The transportation of "mobile equipment" by an "auto" owned or operated by or rented or loaned to any insured; or
- (2)** The use of "mobile equipment" in, or while in practice for, or while being prepared for, any prearranged racing, speed, demolition, or stunting activity.

**i. War**

"Bodily injury" or "property damage" due to war, whether or not declared, or any act or condition incident to war. War includes civil war, insurrection, rebellion or revolution. This exclusion applies only to liability assumed under a contract or agreement.

**j. Damage to Property**

"Property damage" to:

- (1)** Property you own, rent, or occupy;
- (2)** Premises you sell, give away or abandon, if the "property damage" arises out of any part of those premises;
- (3)** Property loaned to you;
- (4)** Personal property in the care, custody or control of the insured;
- (5)** That particular part of real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations, if the "property damage" arises out of those operations; or
- (6)** That particular part of any property that must be restored, repaired or replaced because "your work" was incorrectly performed on it.

Paragraph **(2)** of this exclusion does not apply if the premises are "your work" and were never occupied, rented or held for rental by you.

Paragraphs (3), (4), (5) and (6) of this exclusion do not apply to liability assumed under a sidetrack agreement.

Paragraph (6) of this exclusion does not apply to "property damage" included in the "products-completed operations hazard".

**k. Damage to Your Product**

"Property damage" to "your product" arising out of it or any part of it.

**l. Damage to Your Work**

"Property damage" to "your work" arising out of it or any part of it and included in the "products-completed operations hazard".

This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.

**m. Damage to Impaired Property or Property Not Physically Injured**

"Property damage" to "impaired property" or property that has not been physically injured, arising out of:

- (1) A defect, deficiency, inadequacy or dangerous condition in "your product" or "your work"; or
- (2) A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

This exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical injury to "your product" or "your work" after it has been put to its intended use.

**n. Recall of Products, Work or Impaired Property**

Damages claimed for any loss, cost or expense incurred by you or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:

- (1) "Your product";
- (2) "Your work"; or
- (3) "Impaired property";

if such product, work, or property is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it.

Exclusions c. through n. do not apply to damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner. A separate limit of insurance applies to this coverage as described in LIMITS OF INSURANCE (Section III).

**COVERAGE B. PERSONAL AND ADVERTISING INJURY LIABILITY**

**1. Insuring Agreement**

a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "personal injury" or "advertising injury" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "personal injury" or "advertising injury" to which this insurance does not apply. We may, at our discretion, investigate any "occurrence" or offense and settle any claim or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in LIMITS OF INSURANCE (SECTION III); and
- (2) Our right and duty to defend end when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A or B or medical expenses under Coverage C.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under SUPPLEMENTARY PAYMENTS – COVERAGES A AND B.

b. This insurance applies to:

- (1) "Personal injury" caused by an offense arising out of your business, excluding advertising, publishing, broadcasting or telecasting done by or for you;
- (2) "Advertising injury" caused by an offense committed in the course of advertising your goods, products or services;

but only if the offense was committed in the "coverage territory" during the policy period.

**2. Exclusions**

This insurance does not apply to:

a. "Personal injury" or "advertising injury":

- (1) Arising out of oral or written publication of material, if done by or at the direction of the insured with knowledge of its falsity;

- (2) Arising out of oral or written publication of material whose first publication took place before the beginning of the policy period;
- (3) Arising out of the willful violation of a penal statute or ordinance committed by or with the consent of the insured;
- (4) For which the insured has assumed liability in a contract or agreement. This exclusion does not apply to liability for damages that the insured would have in the absence of the contract or agreement; or
- (5) Arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of pollutants at any time.

**b. "Advertising injury" arising out of:**

- (1) Breach of contract, other than misappropriation of advertising ideas under an implied contract;
- (2) The failure of goods, products or services to conform with advertised quality or performance;
- (3) The wrong description of the price of goods, products or services; or
- (4) An offense committed by an insured whose business is advertising, broadcasting, publishing or telecasting.

**c. Any loss, cost or expense arising out of any:**

- (1) Request, demand or order that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of pollutants; or
- (2) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of pollutants.

Pollutants means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

## **COVERAGE C. MEDICAL PAYMENTS**

### **1. Insuring Agreement**

- a. We will pay medical expenses as described below for "bodily injury" caused by an accident:
  - (1) On premises you own or rent;

- (2) On ways next to premises you own or rent; or

- (3) Because of your operations; provided that:

- (1) The accident takes place in the "coverage territory" and during the policy period;
- (2) The expenses are incurred and reported to us within one year of the date of the accident; and
- (3) The injured person submits to examination, at our expense, by physicians of our choice as often as we reasonably require.

- b. We will make these payments regardless of fault. These payments will not exceed the applicable limit of insurance. We will pay reasonable expenses for:

- (1) First aid administered at the time of an accident;
- (2) Necessary medical, surgical, x-ray and dental services, including prosthetic devices; and
- (3) Necessary ambulance, hospital, professional nursing and funeral services.

### **2. Exclusions**

We will not pay expenses for "bodily injury":

- a. To any insured.
- b. To a person hired to do work for or on behalf of any insured or a tenant of any insured.
- c. To a person injured on that part of premises you own or rent that the person normally occupies.
- d. To a person, whether or not an "employee" of any insured, if benefits for the "bodily injury" are payable or must be provided under a workers compensation or disability benefits law or a similar law.
- e. To a person injured while taking part in athletics.
- f. Included within the "products-completed operations hazard".
- g. Excluded under Coverage A.
- h. Due to war, whether or not declared, or any act or condition incident to war. War includes civil war, insurrection, rebellion or revolution.

## **SUPPLEMENTARY PAYMENTS – COVERAGES A AND B**

We will pay, with respect to any claim we investigate or settle, or any "suit" against an insured we defend:

1. All expenses we incur.
2. Up to \$250 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.
3. The cost of bonds to release attachments, but only for bond amounts within the applicable limit of insurance. We do not have to furnish these bonds.
4. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to \$250 a day because of time off from work.
5. All costs taxed against the insured in the "suit".
6. Prejudgment interest awarded against the insured on that part of the judgment we pay. If we make an offer to pay the applicable limit of insurance, we will not pay any prejudgment interest based on that period of time after the offer.
7. All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of insurance.

These payments will not reduce the limits of insurance.

If we defend an insured against a "suit" and an indemnitee of the insured is also named as a party to the "suit", we will defend that indemnitee if all of the following conditions are met:

- a. The "suit" against the indemnitee seeks damages for which the insured has assumed the liability of the indemnitee in a contract or agreement that is an "insured contract";
- b. This insurance applies to such liability assumed by the insured;
- c. The obligation to defend, or the cost of the defense of, that indemnitee, has also been assumed by the insured in the same "insured contract";
- d. The allegations in the "suit" and the information we know about the "occurrence" are such that no conflict appears to exist between the interests of the insured and the interests of the indemnitee;

e. The indemnitee and the insured ask us to conduct and control the defense of that indemnitee against such "suit" and agree that we can assign the same counsel to defend the insured and the indemnitee; and

f. The indemnitee:

(1) Agrees in writing to:

- (a) Cooperate with us in the investigation, settlement or defense of the "suit";
- (b) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the "suit";
- (c) Notify any other insurer whose coverage is available to the indemnitee; and
- (d) Cooperate with us with respect to coordinating other applicable insurance available to the indemnitee; and

(2) Provides us with written authorization to:

- (a) Obtain records and other information related to the "suit"; and
- (b) Conduct and control the defense of the indemnitee in such "suit".

So long as the above conditions are met, attorneys fees incurred by us in the defense of that indemnitee, necessary litigation expenses incurred by us and necessary litigation expenses incurred by the indemnitee at our request will be paid as Supplementary Payments. Notwithstanding the provisions of paragraph **2.b.(2)** of **COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE LIABILITY (Section I – Coverages)**, such payments will not be deemed to be damages for "bodily injury" and "property damage" and will not reduce the limits of insurance.

Our obligation to defend an insured's indemnitee and to pay for attorneys fees and necessary litigation expenses as Supplementary Payments ends when:

- a. We have used up the applicable limit of insurance in the payment of judgments or settlements; or
- b. The conditions set forth above, or the terms of the agreement described in paragraph **f.** above, are no longer met.

## SECTION II – WHO IS AN INSURED

1. If you are designated in the Declarations as:
    - a. An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.
    - b. A partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds, but only with respect to the conduct of your business.
    - c. A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.
    - d. An organization other than a partnership, joint venture or limited liability company, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.
  2. Each of the following is also an insured:
    - a. Your "employees", other than either your "executive officers" (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business. However, none of these "employees" is an insured for:
      - (1) "Bodily injury" or "personal injury":
        - (a) To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), or to a co-"employee" while that co-"employee" is either in the course of his or her employment or performing duties related to the conduct of your business;
        - (b) To the spouse, child, parent, brother or sister of that co-"employee" as a consequence of paragraph (1)(a) above;
        - (c) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in paragraphs (1)(a) or (b) above; or
        - (d) Arising out of his or her providing or failing to provide professional health care services.
- (2) "Property damage" to property:
    - (a) Owned, occupied or used by,
    - (b) Rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by you, any of your "employees", any partner or member (if you are a partnership or joint venture), or any member (if you are a limited liability company).
  - b. Any person (other than your "employee"), or any organization while acting as your real estate manager.
  - c. Any person or organization having proper temporary custody of your property if you die, but only:
    - (1) With respect to liability arising out of the maintenance or use of that property; and
    - (2) Until your legal representative has been appointed.
  - d. Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this Coverage Part.
3. With respect to "mobile equipment" registered in your name under any motor vehicle registration law, any person is an insured while driving such equipment along a public highway with your permission. Any other person or organization responsible for the conduct of such person is also an insured, but only with respect to liability arising out of the operation of the equipment, and only if no other insurance of any kind is available to that person or organization for this liability. However, no person or organization is an insured with respect to:
  - a. "Bodily injury" to a co-"employee" of the person driving the equipment; or
  - b. "Property damage" to property owned by, rented to, in the charge of or occupied by you or the employer of any person who is an insured under this provision.
4. Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain ownership or majority interest, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:
  - a. Coverage under this provision is afforded only until the 90th day after you acquire or form the organization or the end of the policy period, whichever is earlier;

- b. Coverage A does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and
- c. Coverage B does not apply to "personal injury" or "advertising injury" arising out of an offense committed before you acquired or formed the organization.

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

### **SECTION III – LIMITS OF INSURANCE**

1. The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:
  - a. Insureds;
  - b. Claims made or "suits" brought; or
  - c. Persons or organizations making claims or bringing "suits".
2. The General Aggregate Limit is the most we will pay for the sum of:
  - a. Medical expenses under Coverage C;
  - b. Damages under Coverage A, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard"; and
  - c. Damages under Coverage B.
3. The Products-Completed Operations Aggregate Limit is the most we will pay under Coverage A for damages because of "bodily injury" and "property damage" included in the "products-completed operations hazard".
4. Subject to 2. above, the Personal and Advertising Injury Limit is the most we will pay under Coverage B for the sum of all damages because of all "personal injury" and all "advertising injury" sustained by any one person or organization.
5. Subject to 2. or 3. above, whichever applies, the Each Occurrence Limit is the most we will pay for the sum of:
  - a. Damages under Coverage A; and
  - b. Medical expenses under Coverage C
 because of all "bodily injury" and "property damage" arising out of any one "occurrence".

6. Subject to 5. above, the Fire Damage Limit is the most we will pay under Coverage A for damages because of "property damage" to premises, while rented to you or temporarily occupied by you with permission of the owner, arising out of any one fire.
7. Subject to 5. above, the Medical Expense Limit is the most we will pay under Coverage C for all medical expenses because of "bodily injury" sustained by any one person.

The Limits of Insurance of this Coverage Part apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Insurance.

### **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS**

#### **1. Bankruptcy**

Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this Coverage Part.

#### **2. Duties In The Event Of Occurrence, Offense, Claim Or Suit**

- a. You must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, notice should include:
  - (1) How, when and where the "occurrence" or offense took place;
  - (2) The names and addresses of any injured persons and witnesses; and
  - (3) The nature and location of any injury or damage arising out of the "occurrence" or offense.
- b. If a claim is made or "suit" is brought against any insured, you must:
  - (1) Immediately record the specifics of the claim or "suit" and the date received; and
  - (2) Notify us as soon as practicable.
 You must see to it that we receive written notice of the claim or "suit" as soon as practicable.

**c.** You and any other involved insured must:

- (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";
- (2) Authorize us to obtain records and other information;
- (3) Cooperate with us in the investigation or settlement of the claim or defense against the "suit"; and
- (4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of injury or damage to which this insurance may also apply.

**d.** No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

### **3. Legal Action Against Us**

No person or organization has a right under this Coverage Part:

- a.** To join us as a party or otherwise bring us into a "suit" asking for damages from an insured; or
- b.** To sue us on this Coverage Part unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured obtained after an actual trial; but we will not be liable for damages that are not payable under the terms of this Coverage Part or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

### **4. Other Insurance**

If other valid and collectible insurance is available to the insured for a loss we cover under Coverages A or B of this Coverage Part, our obligations are limited as follows:

#### **a. Primary Insurance**

This insurance is primary except when **b.** below applies. If this insurance is primary, our obligations are not affected unless any of the other insurance is also primary. Then, we will share with all that other insurance by the method described in **c.** below.

### **b. Excess Insurance**

This insurance is excess over any of the other insurance, whether primary, excess, contingent or on any other basis:

- (1) That is Fire, Extended Coverage, Builder's Risk, Installation Risk or similar coverage for "your work";
- (2) That is Fire insurance for premises rented to you or temporarily occupied by you with permission of the owner; or
- (3) If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to Exclusion **g.** of Coverage A (Section I).

When this insurance is excess, we will have no duty under Coverages A or B to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

- (1) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and
- (2) The total of all deductible and self-insured amounts under all that other insurance.

We will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations of this Coverage Part.

### **c. Method of Sharing**

If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

## 5. Premium Audit

- a. We will compute all premiums for this Coverage Part in accordance with our rules and rates.
- b. Premium shown in this Coverage Part as advance premium is a deposit premium only. At the close of each audit period we will compute the earned premium for that period. Audit premiums are due and payable on notice to the first Named Insured. If the sum of the advance and audit premiums paid for the policy period is greater than the earned premium, we will return the excess to the first Named Insured.
- c. The first Named Insured must keep records of the information we need for premium computation, and send us copies at such times as we may request.

## 6. Representations

By accepting this policy, you agree:

- a. The statements in the Declarations are accurate and complete;
- b. Those statements are based upon representations you made to us; and
- c. We have issued this policy in reliance upon your representations.

## 7. Separation Of Insureds

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this Coverage Part to the first Named Insured, this insurance applies:

- a. As if each Named Insured were the only Named Insured; and
- b. Separately to each insured against whom claim is made or "suit" is brought.

## 8. Transfer Of Rights Of Recovery Against Others To Us

If the insured has rights to recover all or part of any payment we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them.

## 9. When We Do Not Renew

If we decide not to renew this Coverage Part, we will mail or deliver to the first Named Insured shown in the Declarations written notice of the nonrenewal not less than 30 days before the expiration date.

If notice is mailed, proof of mailing will be sufficient proof of notice.

## SECTION V – DEFINITIONS

1. "Advertising injury" means injury arising out of one or more of the following offenses:
  - a. Oral or written publication of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
  - b. Oral or written publication of material that violates a person's right of privacy;
  - c. Misappropriation of advertising ideas or style of doing business; or
  - d. Infringement of copyright, title or slogan.
2. "Auto" means a land motor vehicle, trailer or semi-trailer designed for travel on public roads, including any attached machinery or equipment. But "auto" does not include "mobile equipment".
3. "Bodily injury" means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time.
4. "Coverage territory" means:
  - a. The United States of America (including its territories and possessions), Puerto Rico and Canada;
  - b. International waters or airspace, provided the injury or damage does not occur in the course of travel or transportation to or from any place not included in a. above; or
  - c. All parts of the world if:
    - (1) The injury or damage arises out of:
      - (a) Goods or products made or sold by you in the territory described in a. above; or



- (b) The activities of a person whose home is in the territory described in **a.** above, but is away for a short time on your business; and
- (2) The insured's responsibility to pay damages is determined in a "suit" on the merits, in the territory described in **a.** above or in a settlement we agree to.
5. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".
6. "Executive officer" means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar governing document.
7. "Impaired property" means tangible property, other than "your product" or "your work", that cannot be used or is less useful because:
- a. It incorporates "your product" or "your work" that is known or thought to be defective, deficient, inadequate or dangerous; or
  - b. You have failed to fulfill the terms of a contract or agreement;
- if such property can be restored to use by:
- a. The repair, replacement, adjustment or removal of "your product" or "your work"; or
  - b. Your fulfilling the terms of the contract or agreement.
8. "Insured contract" means:
- a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner is not an "insured contract";
  - b. A sidetrack agreement;
  - c. Any easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;
  - d. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
  - e. An elevator maintenance agreement;
- f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.
- Paragraph **f.** does not include that part of any contract or agreement:
- (1) That indemnifies a railroad for "bodily injury" or "property damage" arising out of construction or demolition operations, within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, roadbeds, tunnel, underpass or crossing;
  - (2) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
    - (a) Preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
    - (b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage; or
  - (3) Under which the insured, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in (2) above and supervisory, inspection, architectural or engineering activities.
9. "Leased worker" means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business. "Leased worker" does not include a "temporary worker".
10. "Loading or unloading" means the handling of property:
- a. After it is moved from the place where it is accepted for movement into or onto an aircraft, watercraft or "auto";

- b. While it is in or on an aircraft, watercraft or "auto"; or
- c. While it is being moved from an aircraft, watercraft or "auto" to the place where it is finally delivered;

but "loading or unloading" does not include the movement of property by means of a mechanical device, other than a hand truck, that is not attached to the aircraft, watercraft or "auto".

**11.** "Mobile equipment" means any of the following types of land vehicles, including any attached machinery or equipment:

- a. Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
- b. Vehicles maintained for use solely on or next to premises you own or rent;
- c. Vehicles that travel on crawler treads;
- d. Vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:
  - (1) Power cranes, shovels, loaders, diggers or drills; or
  - (2) Road construction or resurfacing equipment such as graders, scrapers or rollers;
- e. Vehicles not described in a., b., c. or d. above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
  - (1) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or
  - (2) Cherry pickers and similar devices used to raise or lower workers;
- f. Vehicles not described in a., b., c. or d. above maintained primarily for purposes other than the transportation of persons or cargo.

However, self-propelled vehicles with the following types of permanently attached equipment are not "mobile equipment" but will be considered "autos":

- (1) Equipment designed primarily for:
  - (a) Snow removal;
  - (b) Road maintenance, but not construction or resurfacing; or
  - (c) Street cleaning;
- (2) Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and

- (3) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.

**12.** "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.

**13.** "Personal injury" means injury, other than "bodily injury", arising out of one or more of the following offenses:

- a. False arrest, detention or imprisonment;
- b. Malicious prosecution;
- c. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies by or on behalf of its owner, landlord or lessor;
- d. Oral or written publication of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services; or
- e. Oral or written publication of material that violates a person's right of privacy.

**14.** "Products-completed operations hazard":

- a. Includes all "bodily injury" and "property damage" occurring away from premises you own or rent and arising out of "your product" or "your work" except:

- (1) Products that are still in your physical possession; or
- (2) Work that has not yet been completed or abandoned. However, "your work" will be deemed completed at the earliest of the following times:
  - (a) When all of the work called for in your contract has been completed.
  - (b) When all of the work to be done at the job site has been completed if your contract calls for work at more than one job site.
  - (c) When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.

**b.** Does not include "bodily injury" or "property damage" arising out of:

- (1)** The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle not owned or operated by you, and that condition was created by the "loading or unloading" of that vehicle by any insured;
- (2)** The existence of tools, uninstalled equipment or abandoned or unused materials; or
- (3)** Products or operations for which the classification, listed in the Declarations or in a policy schedule, states that products-completed operations are subject to the General Aggregate Limit.

**15.** "Property damage" means:

- a.** Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
- b.** Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the "occurrence" that caused it.

**16.** "Suit" means a civil proceeding in which damages because of "bodily injury", "property damage", "personal injury" or "advertising injury" to which this insurance applies are alleged. "Suit" includes:

- a.** An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent; or
- b.** Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent.

**17.** "Temporary worker" means a person who is furnished to you to substitute for a permanent "employee" on leave or to meet seasonal or short-term workload conditions.

**18.** "Your product" means:

- a.** Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:

- (1)** You;
- (2)** Others trading under your name; or
- (3)** A person or organization whose business or assets you have acquired; and

- b.** Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.

"Your product" includes:

- a.** Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your product"; and
- b.** The providing of or failure to provide warnings or instructions.

"Your product" does not include vending machines or other property rented to or located for the use of others but not sold.

**19.** "Your work" means:

- a.** Work or operations performed by you or on your behalf; and
- b.** Materials, parts or equipment furnished in connection with such work or operations.

"Your work" includes:

- a.** Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your work"; and
- b.** The providing of or failure to provide warnings or instructions.

POLICY NUMBER:

COMMERCIAL GENERAL LIABILITY

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – (FORM B)**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART.

### **SCHEDULE**

**Name of Person or Organization:**

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

WHO IS AN INSURED (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of "your work" for that insured by or for you.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **EXCLUSION – CONTRACTORS – PROFESSIONAL LIABILITY**

This endorsement modifies insurance provided under the following:

### **COMMERCIAL GENERAL LIABILITY COVERAGE PART**

The following exclusion is added to Paragraph 2. **Exclusions of Section I – Coverage A – Bodily Injury And Property Damage Liability** and Paragraph 2. **Exclusions of Section I – Coverage B – Personal And Advertising Injury Liability**:

1. This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of or failure to render any professional services by you or on your behalf, but only with respect to either or both of the following operations:
  - a. Providing engineering, architectural or surveying services to others in your capacity as an engineer, architect or surveyor; and
  - b. Providing, or hiring independent professionals to provide, engineering, architectural or surveying services in connection with construction work you perform.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage", or the offense which caused the "personal and advertising injury", involved the rendering of or failure to render any professional services by you or on your behalf with respect to the operations described above.

2. Subject to Paragraph 3. below, professional services include:
  - a. Preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders, or drawings and specifications; and
  - b. Supervisory or inspection activities performed as part of any related architectural or engineering activities.
3. Professional services do not include services within construction means, methods, techniques, sequences and procedures employed by you in connection with your operations in your capacity as a construction contractor.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **LIMITED EXCLUSION – CONTRACTORS – PROFESSIONAL LIABILITY**

This endorsement modifies insurance provided under the following:

### **COMMERCIAL GENERAL LIABILITY COVERAGE PART**

The following exclusion is added to Paragraph 2. **Exclusions of Section I – Coverage A – Bodily Injury And Property Damage Liability** and Paragraph 2. **Exclusions of Section I – Coverage B – Personal And Advertising Injury Liability**:

This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of or failure to render any professional services by you, but only with respect to your providing engineering, architectural or surveying services in your capacity as an engineer, architect or surveyor.

Professional services include:

1. Preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders, or drawings and specifications; and
2. Supervisory or inspection activities performed as part of any related architectural or engineering activities.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage", or the offense which caused the "personal and advertising injury", involved the rendering of or failure to render any professional services by you with respect to your providing engineering, architectural or surveying services in your capacity as an engineer, architect or surveyor.

This exclusion does not apply to your operations in connection with construction work performed by you or on your behalf.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **DESIGNATED CONSTRUCTION PROJECT(S) GENERAL AGGREGATE LIMIT**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

### **SCHEDULE**

**Designated Construction Project(s):**

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

- A.** For all sums which the insured becomes legally obligated to pay as damages caused by "occurrences" under Section **I** – Coverage **A**, and for all medical expenses caused by accidents under Section **I** – Coverage **C**, which can be attributed only to ongoing operations at a single designated construction project shown in the Schedule above:
1. A separate Designated Construction Project General Aggregate Limit applies to each designated construction project, and that limit is equal to the amount of the General Aggregate Limit shown in the Declarations.
  2. The Designated Construction Project General Aggregate Limit is the most we will pay for the sum of all damages under Coverage **A**, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard", and for medical expenses under Coverage **C** regardless of the number of:
    - a. Insureds;
    - b. Claims made or "suits" brought; or
    - c. Persons or organizations making claims or bringing "suits".
  3. Any payments made under Coverage **A** for damages or under Coverage **C** for medical expenses shall reduce the Designated Construction Project General Aggregate Limit for that designated construction project. Such payments shall not reduce the General Aggregate Limit shown in the Declarations nor shall they reduce any other Designated Construction Project General Aggregate Limit for any other designated construction project shown in the Schedule above.
  4. The limits shown in the Declarations for Each Occurrence, Damage To Premises Rented To You and Medical Expense continue to apply. However, instead of being subject to the General Aggregate Limit shown in the Declarations, such limits will be subject to the applicable Designated Construction Project General Aggregate Limit.

- B.** For all sums which the insured becomes legally obligated to pay as damages caused by "occurrences" under Section I – Coverage **A**, and for all medical expenses caused by accidents under Section I – Coverage **C**, which cannot be attributed only to ongoing operations at a single designated construction project shown in the Schedule above:
1. Any payments made under Coverage **A** for damages or under Coverage **C** for medical expenses shall reduce the amount available under the General Aggregate Limit or the Products-completed Operations Aggregate Limit, whichever is applicable; and
  2. Such payments shall not reduce any Designated Construction Project General Aggregate Limit.
- C.** When coverage for liability arising out of the "products-completed operations hazard" is provided, any payments for damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard" will reduce the Products-completed Operations Aggregate Limit, and not reduce the General Aggregate Limit nor the Designated Construction Project General Aggregate Limit.
- D.** If the applicable designated construction project has been abandoned, delayed, or abandoned and then restarted, or if the authorized contracting parties deviate from plans, blueprints, designs, specifications or timetables, the project will still be deemed to be the same construction project.
- E.** The provisions of Section III – Limits Of Insurance not otherwise modified by this endorsement shall continue to apply as stipulated.



**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **NEW YORK CHANGES IN BUSINESS AUTO AND MOTOR CARRIER COVERAGE FORMS**

For a covered "auto" licensed or principally garaged in New York, this endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM  
MOTOR CARRIER COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

### **A. Changes In Covered Autos Liability Coverage**

1. The third paragraph of **A. Coverage** is replaced by the following:

We have the right and duty to defend any "insured" against a "suit" asking for such damages or a "covered pollution cost or expense", even if the allegations of the "suit" are groundless, false or fraudulent. However, we have no duty to defend any "insured" against a "suit" seeking damages for "bodily injury" or "property damage" or a "covered pollution cost or expense" to which this insurance does not apply. We may investigate and settle any claim or "suit" as we consider appropriate. Our duty to defend or settle ends when the Covered "Autos" Liability Coverage Limit of Insurance has been exhausted by payment of judgments or settlements.

2. Who Is An Insured does not include anyone loading or unloading a covered "auto" except you, your "employees", a lessee or borrower or any of their "employees".

3. **Supplementary Payments** is amended as follows:

- a. Paragraph **(5)** is replaced by the following:

**(5)** All costs taxed against the "insured" in any "suit" against the "insured" we defend.

- b. The following paragraphs are added:

**(7)** All expenses incurred by an "insured" for first aid to others at the time of an "accident".

- (8)** The cost of appeal bonds.

4. Paragraph **b. Out-of-state Coverage Extensions** in the Business Auto and Motor Carrier Coverage Forms is replaced by the following:

#### **b. Out-of-state Coverage Extensions**

While a covered "auto" is used or operated in any other state or Canadian province, we will provide at least the minimum amount and kind of coverage which is required in such cases under the laws of such jurisdiction.

5. **Exclusions** is changed as follows:

- a. The **Employee Indemnification And Employer's Liability** Exclusion is replaced by the following:

#### **Employee Indemnification And Employer's Liability**

This insurance does not apply to:

"Bodily injury" to an "employee" of the "insured" arising out of and in the course of:

- (1)** Employment by the "insured"; or
- (2)** Performing the duties related to the conduct of the "insured's" business.

But this exclusion does not apply to "bodily injury" to domestic "employees" not entitled to workers' compensation benefits or to liability assumed by the "insured" under an "insured contract". For the purposes of the Coverage Form, a domestic "employee" is a person engaged in household or domestic work performed principally in connection with a residence premises.

- b. The **Fellow Employee** Exclusion is replaced by the following:

**Fellow Employee**

This insurance does not apply to:

"Bodily injury" to any fellow "employee" of the "insured" arising out of and in the course of the fellow "employee's" employment or while performing duties related to the conduct of your business.

However, this exclusion only applies if the fellow "employee" is entitled to benefits under any of the following: workers' compensation, unemployment compensation or disability benefits law, or any similar law.

- c. The **Handling Of Property** Exclusion does not apply.
- d. The **Movement Of Property By Mechanical Device** Exclusion does not apply.
- e. The **Operations** Exclusion does not apply.
- f. The **Completed Operations** Exclusion does not apply.
- g. The **Pollution** Exclusion does not apply.
- h. The **War** Exclusion is replaced by the following:

**War**

"Bodily injury" or "property damage" caused by war, whether or not declared, civil war, insurrection, rebellion or revolution, or any act or condition incident to any of the foregoing.

- i. The **Racing** Exclusion does not apply.
- j. The **Unmanned Aircraft** Exclusion does not apply.
- k. The following exclusion is added:

**Spousal Liability**

"Bodily injury" to or "property damage" of the spouse of an "insured". However, we will pay all sums an "insured" legally must pay if named as a third-party defendant in a legal action commenced by his or her spouse against another party.

6. If the Limit Of Insurance for Covered Autos Liability Coverage shown in the Declarations is equal to or greater than \$160,000, the **Limit Of Insurance** provision is replaced by the following:

**Limit Of Insurance**

Limit Of Insurance applies except that we will apply the Limit Of Insurance for Covered Autos Liability Coverage shown in the Declarations to first provide the separate limits required by the New York Motor Vehicle Safety Responsibility Act for:

- a. "Bodily injury" not resulting in death of any one person caused by any one "accident";
- b. "Bodily injury" not resulting in death of two or more persons caused by any one "accident";
- c. "Bodily injury" resulting in death of any one person caused by any one "accident";
- d. "Bodily injury" resulting in death of two or more persons caused by any one "accident"; or
- e. "Property damage" in any one "accident".

This provision will not change our total Limit of Insurance.

7. If the Limit Of Insurance for Covered Autos Liability Coverage shown in the Declarations is less than \$160,000, the **Limit Of Insurance** provision is replaced by the following:

**Limit Of Insurance**

Regardless of the number of covered "autos", "insureds", premiums paid, claims made or vehicles involved in the "accident", the most we will pay for the total of all damages and "covered pollution cost or expense" combined, resulting from any one "accident", is the Limit Of Insurance for Covered Autos Liability Coverage shown in the Declarations, except for those damages for "bodily injury" resulting in death. We will apply the Limit Of Insurance for Covered Autos Liability Coverage shown in the Declarations to first provide the separate limits required by the New York Motor Vehicle Safety Responsibility Act as follows:

- a. "Bodily injury" not resulting in death of any one person caused by any one "accident";
- b. "Bodily injury" not resulting in death of two or more persons caused by any one "accident"; or
- c. "Property damage" in any one "accident".

This provision will not change our total Limit of Insurance.

All "bodily injury" and "property damage" resulting from continuous or repeated exposure to substantially the same conditions will be considered as resulting from one "accident".

In addition, our Limit of Insurance for "bodily injury" resulting in death is as follows:

- a. Up to \$50,000 for "bodily injury" resulting in death of any one person caused by any one "accident"; and
- b. Up to \$100,000 for "bodily injury" resulting in death of two or more persons caused by any one "accident", subject to a \$50,000 maximum for any one person.

If the Limit Of Insurance for Covered Autos Liability Coverage shown in the Declarations is not exhausted by payment of damages for:

- a. "Bodily injury" not resulting in death;
- b. "Property damage"; or
- c. "Covered pollution cost or expense";

any remaining amounts will be used to pay damages for "bodily injury" resulting in death, to the extent the Limit Of Insurance for Covered Autos Liability Coverage shown in the Declarations is not increased.

8. If forming part of the Policy, the Nuclear Energy Liability Exclusion Endorsement (Broad Form) does not apply to the Commercial Auto Coverage Part.

#### **B. Changes In Trailer Interchange Coverage**

Paragraph **A.2. of Section III – Trailer Interchange Coverage** in the Motor Carrier Coverage Form is replaced by the following:

2. We have the right and duty to defend any "insured" against a "suit" asking for these damages, even if the allegations of the "suit" are groundless, false or fraudulent. However, we have no duty to defend any "insured" against a "suit" seeking damages for any "loss" to which this insurance does not apply. We may investigate and settle any claim or "suit" as we consider appropriate. Our duty to defend or settle ends when the Limit of Insurance for that coverage has been exhausted by payment of judgments or settlements.

#### **C. Changes In Physical Damage Coverage**

1. The **Owned Autos** provision of Section **I – Covered Autos** is replaced by the following:

##### **Owned Autos**

- a. If Symbols **1, 2, 3, 4, 5, 6** or **19** are entered next to a coverage in Item Two of the Declarations, then you have coverage for "autos" that you acquire after the policy period begins of the type described for the remainder of the policy period.

- b. But, if Symbol **7** is entered next to a coverage in Item Two of the Declarations, an "auto" you acquire after the policy period begins will be a covered "auto" for that coverage only if:

- (1) We already cover all "autos" that you own for that coverage or it replaces an "auto" you previously owned that had that coverage; and

- (2) You tell us within 30 days after you acquire it that you want us to cover it for that coverage.

- c. Notwithstanding the provisions of Paragraphs **a.** and **b.**, during the term of the Coverage Part, Physical Damage Coverage for an additional or replacement private passenger "auto" shall not become effective until you notify us and request coverage for the "auto".

However, if you replace a private passenger "auto" currently insured with us for a continuous period of at least 12 months, we will provide the same coverage which applied to the replaced "auto", without a coverage request, for five calendar days beginning on the date you acquired the replacement "auto". After five calendar days, coverage will not apply until you request coverage for the "auto".

- d. An "auto" that is leased or rented to you without a driver, under a written agreement for a continuous period of at least six months that requires you to provide primary insurance covering such "auto", will be considered a covered "auto" you own.

2. The **War Or Military Action** Exclusion is replaced by the following:

**War Or Military Action**

War, whether or not declared, civil war, insurrection, rebellion or revolution, or any act or condition incident to any of the foregoing.

3. **Deductible** is replaced by the following:

**Deductible**

For each covered "auto", our obligation to pay for, return or replace damaged or stolen property will be reduced by the applicable deductible shown in the Declarations.

4. The following provisions are added to **Physical Damage Coverage** and apply in place of any conflicting policy provisions:

**a. Mandatory Inspection For Physical Damage Coverage**

- (1) We have the right to inspect any private passenger "auto", including a non-owned "auto", insured or intended to be insured under this Coverage Part before physical damage coverage shall become effective, except to the extent that this right is prescribed and limited by New York State Department of Financial Services' Insurance Regulation No. 79 (11 NYCRR 67) or Section 3411 of the New York Insurance Law.
- (2) When an inspection is required by us, you must cooperate and make the "auto" available for the inspection.

**b. "Auto" Repairs Under Physical Damage Coverage**

Payment of a physical damage "loss" shall not be conditioned upon the repair of the "auto". We may not require that repairs be made by a particular repair shop or concern.

**c. Recovery Of Stolen Or Abandoned "Autos"**

If a private passenger "auto" insured under this Coverage Part for physical damage coverage is stolen or abandoned, we or our authorized representative shall, when notified of the location of the "auto", have the right to take custody of the "auto" for safekeeping.

**D. Changes In Conditions**

1. Paragraphs **a.** and **b.(2)** of the **Duties In The Event Of Accident, Claim, Suit Or Loss** Condition in the Business Auto and Motor Carrier Coverage Forms are replaced by the following:

We have no duty to provide coverage under this Policy if the failure to comply with the following duties is prejudicial to us:

- a.** In the event of "accident", claim, "suit" or "loss", you or someone on your behalf must give us or our authorized representative notice as soon as reasonably possible of the "accident" or "loss". Include:
  - (1) How, when and where the "accident" or "loss" occurred;
  - (2) The "insured's" name and address; and
  - (3) To the extent possible, the names and addresses of any injured persons and witnesses.

Written notice by or on behalf of the injured person or any other claimant to our authorized representative shall be deemed notice to us.

- b.** Additionally, you and any other involved "insured" must:
  - (2) Send us copies of any request, demand, order, notice, summons or legal paper received concerning the claim or "suit" as soon as reasonably possible.

2. The **Legal Action Against Us** Condition in the Business Auto and Motor Carrier Coverage Forms is replaced by the following:

**Legal Action Against Us**

- a.** Except as provided in Paragraph **b.**, no one may bring a legal action against us until:
  - (1) There has been full compliance with all of the terms of the Coverage Form; and
  - (2) Under Covered Autos Liability Coverage, we, by written agreement with the "insured" and the claimant, agree that the "insured" has an obligation to pay or until the amount of that obligation has finally been determined by judgment after trial. No person or organization has any right under this Policy to bring us into any action to determine the "insured's" liability.

- b. With respect to "bodily injury" claims, if we deny coverage or do not admit liability because an "insured" or the injured person, someone acting for the injured person or other claimant fails to give us written notice as soon as practicable, then the injured person, someone acting for the injured person or other claimant may bring an action against us, provided the sole question is whether the denial of coverage or nonadmission of liability is based on the failure to provide timely notice.

However, the injured person, someone acting for the injured person or other claimant may not bring an action if within 60 days after we deny coverage or do not admit liability, we or an "insured":

- (1) Brings an action to declare the rights of the parties under the Policy; and
- (2) Names the injured person, someone acting for the injured person or other claimant as a party to the action.

3. Paragraph **d.** of the **Other Insurance** Condition in the Business Auto Coverage Form and Paragraph **h. Other Insurance – Primary And Excess Insurance Provisions** in the Motor Carrier Coverage Form are replaced by the following:

When this Coverage Form and any valid and collectible insurance under any other Coverage Form or policy covers on the same basis, either excess or primary, we will pay only our share. Our share is the proportion that the Limit of Insurance of our Coverage Form bears to the total of the limits of all the Coverage Forms and policies covering on the same basis.

4. The following provision is added and supersedes any provision to the contrary:

Failure to give notice to us as soon as practicable, as required under this Coverage Part, shall not invalidate any claim made by the "insured", injured person or any other claimant, unless the failure to provide such timely notice has prejudiced us. However, no claim made by the "insured", injured person or other claimant will be invalidated if it shall be shown not to have been reasonably possible to give such timely notice and that notice was given as soon as was reasonably possible thereafter.

5. The **Loss Payment – Physical Damage Coverages** Condition is replaced by the following:

**Loss Payment – Physical Damage Coverages**

At our option, we may:

- a. Pay for or replace damaged or stolen property; or
- b. Return the stolen or damaged property, at our expense. We will pay for any damage that results to the "auto" from the "loss".

If we pay for the "loss", our payment will include the applicable sales tax for the damaged or stolen property.

6. The **Two Or More Coverage Forms Or Policies Issued By Us** Condition in the Business Auto and Motor Carrier Coverage Forms is changed as follows:

This condition does not apply to liability coverage.

7. The **Premium Audit** Condition is amended by the addition of the following:

An audit to determine the final premium due or to be refunded will be completed within 180 days after the expiration date of the Policy or the anniversary date, if this is a continuous policy or a policy written for a term longer than one year. But the audit may be waived if:

- a. The total annual premium attributable to the auditable exposure base is not reasonably expected to exceed \$1,500; or
- b. The Policy requires notification to the insurer with specific identification of any additional exposure units (e.g., autos) for which coverage is requested.
- c. Except as provided in Paragraphs **a.** and **b.** above, the **Examination Of Your Books And Records** Common Policy Condition continues to apply.

## E. Changes In Definitions

The **Definitions** section in the Business Auto and Motor Carrier Coverage Forms is changed as follows:

1. The "covered pollution cost or expense" definition is replaced by the following:

"Covered pollution cost or expense" means any cost or expense arising out of:

- a. Any request, demand, order or statutory or regulatory requirement; or
- b. Any claim or "suit" by or on behalf of a governmental authority demanding;

that the "insured" or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants".

2. The "insured contract" definition is replaced by the following:

"Insured contract" means:

- a. A lease of premises;
- b. A sidetrack agreement;
- c. An easement or license agreement in connection with vehicle or pedestrian private railroad crossings at grade;
- d. Any other easement agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;
- e. An indemnification of a municipality as required by ordinance, except in connection with work for a municipality;
- f. That part of any contract or agreement entered into, as part of your business, by you or any of your employees, pertaining to the rental or lease of any "auto"; or
- g. That part of any other contract or agreement pertaining to your business under which you assume the tort liability of another to pay damages because of "bodily injury" or "property damage" to a third person or organization, if the contract or agreement is made prior to the "bodily injury" or "property damage". Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

An "insured contract" does not include that part of any contract or agreement:

- a. That pertains to the loan, lease or rental of an "auto" to you or any of your employees, if the "auto" is loaned, leased or rented with a driver;
- b. That holds a person or organization engaged in the business of transporting property by "auto" for hire harmless for your use of a covered "auto" over a route or territory that person or organization is authorized to serve by public authority; or
- c. Under which the "insured" assumes liability for injury or damage caused by the dumping, discharge or escape of:

- (1) Irritants, pollutants or contaminants that are, or that are contained in, any property that is:

- (a) Being moved from the place where such property or pollutants are accepted by the "insured" for movement into or onto the covered "auto";
- (b) Being transported or towed by the covered "auto";
- (c) Being moved from the covered "auto" to the place where such property or pollutants are finally delivered, disposed of or abandoned by the "insured";
- (d) Otherwise in the course of transit; or
- (e) Being stored, disposed of, treated or processed in or upon the covered "auto" other than fuels, lubricants, fluids, exhaust gases or other similar pollutants that are needed for, or result from, the normal electrical, hydraulic or mechanical functioning of the covered "auto" or its parts.

- (2) Irritants, pollutants or contaminants not described in Paragraph (1) above unless:
  - (a) The pollutants or any property in which the pollutants are contained is upset, overturned or damaged as a result of the maintenance or use of the covered "auto"; and
  - (b) The discharge, dispersal, release or escape of the pollutants is caused directly by such upset, overturn or damage.
- 3. The "mobile equipment" definition is replaced by the following:  
 "Mobile equipment" means any of the following types of land vehicles, including any attached machinery or equipment:
  - a. Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
  - b. Vehicles maintained for use solely on or next to premises you own or rent;
  - c. Vehicles that travel on crawler treads;
  - d. Vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:
    - (1) Power cranes, shovels, loaders, diggers or drills; or
    - (2) Road construction or resurfacing equipment such as graders, scrapers or rollers.
  - e. Vehicles not described in Paragraph a., b., c. or d. above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
    - (1) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well-servicing equipment; or
    - (2) Cherry pickers and similar devices used to raise or lower workers.

- f. Vehicles not described in Paragraph a., b., c. or d. above maintained primarily for purposes other than the transportation of persons or cargo. However, self-propelled vehicles with the following types of permanently attached equipment are not "mobile equipment" but will be considered "autos":
  - (1) Equipment designed primarily for:
    - (a) Snow removal;
    - (b) Road maintenance, but not construction or resurfacing; or
    - (c) Street cleaning;
  - (2) Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and
  - (3) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting or well-servicing equipment.

"Mobile equipment" does not include land vehicles that are subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged. Land vehicles subject to a compulsory or financial responsibility law or other motor vehicle insurance law are considered "autos".

However, the operation of:

- a. Equipment described in Paragraphs f.(2) and f.(3) above; or
- b. Machinery or equipment that is on, attached to, or part of, a land vehicle that would qualify under the definition of "mobile equipment" if it were not subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged;

is considered operation of "mobile equipment" and not operation of an "auto".

- 4. The "unmanned aircraft" definition does not apply.

## F. Changes In Forms And Endorsements

1. All references to Underinsured Motorists Coverage shall mean Supplementary Uninsured/Underinsured Motorists Coverage.
2. If the Garagekeepers Coverage endorsement or the Garagekeepers Coverage – Customers' Sound-receiving Equipment endorsement is attached, then:
  - a. Paragraph **B.2.** is replaced by the following:
    2. We will have the right and duty to defend any "insured" against a "suit" asking for these damages, even if the allegations of the "suit" are groundless, false or fraudulent. However, we have no duty to defend any "insured" against a "suit" seeking damages for "loss" to which this insurance does not apply. We may investigate and settle any claim or "suit" as we consider appropriate. Our duty to defend or settle ends for a coverage when the Limit of Insurance for that coverage has been exhausted by payment of judgments or settlements.
  - b. Exclusion **3.** is replaced by the following:
    3. We will not pay for "loss" caused by war, whether or not declared, civil war, insurrection, rebellion or revolution, or any act or condition incident to any of the foregoing.
3. If the Auto Medical Payments Coverage endorsement is attached, then Exclusion **C.6.** is replaced by the following:
  6. "Bodily injury" caused by war, whether or not declared, civil war, insurrection, rebellion or revolution, or any act or condition incident to any of the foregoing.
4. If the Single Interest Automobile Physical Damage Insurance Policy is attached, the **War** Exclusion is replaced by the following:

This insurance does not apply to "loss" caused by war, whether or not declared, civil war, insurrection, rebellion or revolution, or any act or condition incident to any of the foregoing.
5. If the Stated Amount Insurance endorsement is attached, then Paragraph **C.2.** of that endorsement does not apply.
6. If the Trailer Interchange Coverage endorsement is attached, then Paragraph **A.2.** is replaced by the following:
  2. We have the right and duty to defend any "insured" against a "suit" asking for these damages, even if the allegations of the "suit" are groundless, false or fraudulent. However, we have no duty to defend any "insured" against a "suit" seeking damages for any "loss" to which this insurance does not apply. We may investigate and settle any claim or "suit" as we consider appropriate. Our duty to defend or settle ends for a coverage when the Limit of Insurance for that coverage has been exhausted by payment of judgments or settlements.
7. If the Motor Carrier Endorsement is attached, then Paragraph **B.1.c.** is replaced by the following:
  - c. We have the right and duty to defend any "insured" against a "suit" asking for these damages, even if the allegations of the "suit" are groundless, false or fraudulent. However, we have no duty to defend any "insured" against a "suit" seeking damages for any "loss" to which this insurance does not apply. We may investigate and settle any claim or "suit" as we consider appropriate. Our duty to defend or settle ends for a coverage when the Limit of Insurance for that coverage has been exhausted by payment of judgments or settlements.



## SPECIAL PROTECTIVE AND HIGHWAY LIABILITY POLICY – NEW YORK DEPARTMENT OF TRANSPORTATION

Various provisions of this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy, the words "you" and "your" refer to the Named Insured shown in the Declarations. The words "we", "us" and "our" refer to the Company providing this insurance.

The word "insured" means any person or organization qualifying as such under Section II – Who Is An Insured.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section V – Definitions.

### SECTION I – COVERAGES

#### BODILY INJURY AND PROPERTY DAMAGE LIABILITY

##### 1. Insuring Agreement

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages even if the allegations of the "suit" are groundless, false or fraudulent. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury" or "property damage" to which this insurance does not apply. We may, at our discretion, investigate any "occurrence" and settle any claim or "suit" that may result. But:

- (1) The amount we will pay as damages is limited as described in Section III – Limits Of Insurance; and
- (2) Our right and duty to defend end when we have used up the applicable limit of insurance in the payment of judgments or settlements.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments.

- b. This insurance applies to "bodily injury" and "property damage" only if:
- (1) The "bodily injury" and "property damage" is caused by an "occurrence" that takes place in the "coverage territory" and arises out of:
    - (a) Operations performed for you by the "contractor" named in the Declarations under the designated contract, including your general supervision of these operations; or

- (b) The existence of any condition in any portion of a state highway included under the designated contract with the "contractor" named in the Declarations; and

- (2) The "bodily injury" or "property damage" occurs during the policy period.

- (3) Prior to the policy period, no insured listed as Named Insured under Paragraph 1. of Section II – Who Is An Insured and no "employee" authorized by you to give or receive notice of an "occurrence" or claim, knew that the "bodily injury" or "property damage" had occurred, in whole or in part. If such a listed insured or authorized "employee" knew, prior to the policy period, that the "bodily injury" or "property damage" occurred, then any continuation, change or resumption of such "bodily injury" or "property damage" during or after the policy period will be deemed to have been known prior to the policy period.

- c. "Bodily injury" or "property damage" which occurs during the policy period and was not, prior to the policy period, known to have occurred by any insured listed as Named Insured under Paragraph 1. of Section II – Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim, includes any continuation, change or resumption of that "bodily injury" or "property damage" after the end of the policy period.

d. "Bodily injury" or "property damage" will be deemed to have been known to have occurred at the earliest time when any insured listed as Named Insured under Paragraph 1. of Section II – Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim:

- (1) Reports all, or any part, of the "bodily injury" or "property damage" to us or any other insurer;
- (2) Receives a written or verbal demand or claim for damages because of the "bodily injury" or "property damage"; or
- (3) Becomes aware by any other means that "bodily injury" or "property damage" has occurred or has begun to occur.

e. Damages because of "bodily injury" include damages claimed by any person or organization for care, loss of services or death resulting at any time from the "bodily injury".

## 2. Exclusions

This insurance does not apply to:

### a. Expected Or Intended Injury

"Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" resulting from the use of reasonable force to protect persons or property.

### b. Contractual Liability

"Bodily injury" or "property damage" for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages:

- (1) That the insured would have in the absence of the contract or agreement; or
- (2) Assumed in a contract or agreement that is an "insured contract", provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement. Solely for the purposes of liability assumed in an "insured contract", reasonable attorneys' fees and necessary litigation expenses incurred by or for a party other than an insured are deemed to be damages because of "bodily injury" or "property damage", provided:
  - (a) Liability to such party for, or for the cost of, that party's defense has also been assumed in the same "insured contract"; and

(b) Such attorneys' fees and litigation expenses are for defense of that party against a civil or alternative dispute resolution proceeding in which damages to which this insurance applies are alleged.

### c. Aircraft, Auto Or Watercraft

"Bodily injury" or "property damage" arising out of the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft:

- (1) Owned or operated by or rented or loaned to the State of New York or any of its subdivisions or departments; or
- (2) Operated by any person in the course of employment by the State of New York or any of its subdivisions or departments.

Use includes operation and loading or unloading.

### d. Mobile Equipment

"Bodily injury" or "property damage" arising out of the transportation of "mobile equipment" by an "auto" owned or operated by or rented or loaned to or for the State of New York or any of its subdivisions or departments or the use of "mobile equipment" in, or while in practice for, or while being prepared for, any prearranged racing, speed, demolition, or stunting activity.

### e. War

"Bodily injury" or "property damage", however caused, arising, directly or indirectly, out of:

- (1) War, including undeclared or civil war;
- (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- (3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

### f. Workers' Compensation And Similar Laws

Any obligation of the insured under a workers' compensation, disability benefits or unemployment compensation law or any similar law.

### g. Employer's Liability

"Bodily injury" to:

- (1) An "employee" of the insured arising out of and in the course of:
  - (a) Employment by the insured; or

- (b) Performing duties related to the conduct of the insured's business; or
- (2) The spouse, child, parent, brother or sister of that "employee" as a consequence of Paragraph (1) above.

This exclusion applies:

- (1) Whether the insured may be liable as an employer or in any other capacity; and
- (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

#### **h. Damage To Property**

"Property damage" to:

- (1) Property you own, rent or occupy, including any costs or expenses incurred by you, or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property;
- (2) Property loaned to you;
- (3) Personal property in the care, custody or control of the insured;
- (4) "Work" performed for you by the "contractor".

#### **i. Public Utility Operations**

"Bodily injury" or "property damage" arising out of public utility operations by the State of New York or any of its subdivisions or departments.

#### **j. Failure To Sand Or Remove Snow Or Ice**

"Bodily injury" or "property damage" arising out of failure of the State of New York or the "contractor" to sand or remove snow or ice on the highway or temporary roadway. This exclusion does not apply if the "contractor" undertakes to sand or remove snow or ice and the work is performed in a negligent manner.

#### **k. Pollution**

- (1) "Bodily injury" or "property damage" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":
  - (a) At or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to, any insured. However, this subparagraph does not apply to "bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire".

- (b) At or from any premises, site or location which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste;
- (c) Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for:
  - (i) Any insured; or
  - (ii) Any person or organization for whom you may be legally responsible; or
- (d) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the "pollutants" are brought on or to the premises, site or location in connection with such operations by such insured, contractor or subcontractor. However, this subparagraph does not apply to:
  - (i) "Bodily injury" or "property damage" arising out of the escape of fuels, lubricants or other operating fluids which are needed to perform the normal electrical, hydraulic or mechanical functions necessary for the operation of "mobile equipment" or its parts, if such fuels, lubricants or other operating fluids escape from a vehicle part designed to hold, store or receive them. This exception does not apply if the "bodily injury" or "property damage" arises out of the intentional discharge, dispersal or release of the fuels, lubricants or other operating fluids, or if such fuels, lubricants or other operating fluids are brought on or to the premises, site or location with the intent that they be discharged, dispersed or released as part of the operations being performed by such insured "contractor" or subcontractor; or
  - (ii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire".

- (e) At or from any premises, site or location on which any insured or any "contractors" or subcontractors working directly or indirectly on any insured's behalf are performing operations if the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants".
- (2) Any loss, cost, or expense arising out of any:
  - (a) Request, demand or order that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
  - (b) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

However, this paragraph does not apply to liability for damages because of "property damage" that the insured would have in the absence of such request, demand, order or statutory or regulatory requirement, or such claim or "suit" by or on behalf of a governmental authority.

#### **I. Damage To Impaired Property Or Property Not Physically Injured**

"Property damage" to "impaired property" or property that has not been physically injured, arising out of:

- (1) A defect, deficiency, inadequacy or dangerous condition in your work; or
- (2) A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

This exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical injury to "work" performed for you by the "contractor" after it has been put to its intended use by you.

#### **SUPPLEMENTARY PAYMENTS**

- 1. We will pay, with respect to any claim we investigate or settle, or any "suit" against an insured we defend:
  - a. All expenses we incur.

- b. Up to \$250 for cost of bail bonds required because of accidents or traffic violations arising out of the use of any vehicle to which Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.
- c. The cost of bonds to release attachments, but only for bond amounts within the applicable limit of insurance. We do not have to furnish these bonds.
- d. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to \$250 a day because of time off from work.
- e. All court costs taxed against the insured in the "suit". However, these payments do not include attorneys' fees or attorneys' expenses taxed against the insured.
- f. Prejudgment interest awarded against the insured on that part of the judgment we pay. If we make an offer to pay the applicable limit of insurance, we will not pay any prejudgment interest based on that period of time after the offer.
- g. All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of insurance.
- h. Expenses incurred by the insured for first aid administered to others at the time of an accident, for "bodily injury" to which this insurance applies.

These payments will not reduce the limits of insurance.

- 2. If we defend an insured against a "suit", and any one of the parties described in Paragraphs **a.**, **b.**, **c.** or **d.** below is also named as a party to the "suit", we will defend that party against the "suit" if all of the conditions listed in Paragraph **3.** are met:
  - a. Any municipality in which operations are being performed for you by the "contractor" named in the Declarations under the designated contract;
  - b. A public benefit corporation, railroad or public utility whose property or facilities are affected by the operations being performed for you by the "contractor" named in the Declarations under the designated contract;
  - c. Any consultant, inspecting engineer or inspector working on the project for which operations are being performed by the "contractor" named in the Declarations under the designated contract; or

- d. Any agents or employees of parties listed in Paragraphs **a.**, **b.** or **c.** above.
- 3. We will defend a party described in Paragraphs **2.a.**, **b.**, **c.** and **d.** above if all of the following conditions are met:
  - a. A claim for damages to which this insurance applies is made against the insured in the "suit" and a claim for the same damages is also made in the same "suit" against such party;
  - b. Such party and the insured ask us to conduct and control the defense of that party against such "suit"; and
  - c. Such party agrees in writing to:
    - (1) Cooperate with us in the investigation and defense of the "suit"; and
    - (2) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the "suit"; and
  - d. Such party provides us with written authorization to:
    - (1) Obtain records and other information related to the "suit"; and
    - (2) Conduct and control the defense of such party in such "suit".

So long as the above conditions are met, attorneys' fees incurred by us in the defense of such party, necessary litigation expenses incurred by us and necessary litigation expenses incurred by such party at our request will be paid as Supplementary Payments.

- 4. Our obligation to defend a party named in Paragraphs **2.a.**, **b.**, **c.** and **d.** above and to pay for attorneys' fees and necessary litigation expenses as Supplementary Payments ends when:
  - a. We have used up the insured's applicable limit of insurance in the payment of judgments or settlements; or
  - b. The conditions set forth above, or the terms of the agreement described in Paragraphs **3.b.** and **c.** above, are no longer met.

## SECTION II – WHO IS AN INSURED

Each of the following is an insured under this insurance.

- 1. The Named Insured;
- 2. The Commissioner of Transportation and all employees of the Commissioner of Transportation while acting within the scope of their duties.

## SECTION III – LIMITS OF INSURANCE

- 1. The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:
  - a. Insureds;
  - b. Claims made or "suits" brought; or
  - c. Persons or organizations making claims or bringing "suits".
- 2. The General Aggregate Limit is the most we will pay for the sum of all damages because of all "bodily injury" and "property damage" arising out of operations performed for you by the "contractor" named in the Declarations under the designated contract, including your general supervision of these operations. However, this limit does not apply to damages covered under the Existence Hazard Aggregate Limit.
- 3. The Existence Hazard Aggregate Limit is the most we will pay for the sum of all damages because of all "bodily injury" and "property damage" arising out of the existence of any conditions in any portion of a state highway included under the designated contract with the "contractor" named in the Declarations. However, this limit does not apply to damages covered under the General Aggregate Limit.
- 4. Subject to Paragraphs **2.** and **3.** above, as applicable, the Each Occurrence Limit is the most we will pay for the sum of damages because of all "bodily injury" and "property damage" arising out of any one "occurrence".

If you designate more than one contract in the Declarations, both the General Aggregate Limit and the Existence Hazard Aggregate Limit shall apply separately, and in the same amount, with respect to operations performed under each designated contract.

The limits of this policy apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for a period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Insurance.

## SECTION IV – CONDITIONS

### 1. Bankruptcy

Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligation under this policy.

### 2. Cancellation

- a. The first Named Insured shown in the Declarations may cancel this policy by mailing or delivering to us advance written notice of cancellation.
- b. We may cancel this policy by mailing or delivering to the first Named Insured and the "contractor" written notice of cancellation at least:
  - (1) 10 days before the effective date of cancellation if we cancel for nonpayment of premium; or
  - (2) 30 days before the effective date of cancellation if we cancel for any other reason.
- c. We will mail or deliver our notices to the first Named Insured's and the "contractor's" last mailing address known to us.
- d. Notice of cancellation will state the effective date of cancellation. The policy period will end on that date.
- e. If this policy is canceled, we will send the "contractor" any premium refund due. If we cancel, the refund will be pro rata. If the insured or the "contractor" cancels, the refund may be less than pro rata. The cancellation will be effective even if we have not made or offered a refund.
- f. If notice is mailed, proof of mailing will be sufficient proof of notice.

### 3. Changes

This policy contains all the agreements between you, the "contractor" and us concerning the insurance afforded. The first Named Insured and the "contractor" is authorized to make changes in the terms of this policy with our consent.

This policy's terms can be amended or waived only by endorsement issued by us and made part of this policy.

### 4. Duties In The Event Of Occurrence, Claim Or Suit

- a. You must see to it that we are notified as soon as practicable of an "occurrence" which may result in a claim. To the extent possible, notice should include:
  - (1) How, when and where the "occurrence" took place;

- (2) The names and addresses of any injured persons and witnesses; and

- (3) The nature and location of any injury or damage arising out of the "occurrence".

- b. If a claim is made or "suit" is brought against any insured, you must:

- (1) Immediately record the specifics of the claim or "suit" and the date received; and

- (2) Notify us as soon as practicable.

You must see to it that we receive written notice of the claim or "suit" as soon as practicable.

- c. You and any other involved insured must:

- (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";

- (2) Authorize us to obtain records and other information;

- (3) Cooperate with us in the investigation or settlement of the claim or defense against the "suit"; and

- (4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of injury or damage to which this insurance may also apply.

- d. No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

- e. Notice given by or on behalf of the insured, or written notice by or on behalf of the injured person or any other claimant, to any agent of ours in New York State, with particulars sufficient to identify the insured, shall be considered to be notice to us.

- f. Failure to give notice to us as required under this Coverage Part shall not invalidate any claim made by the insured, injured person or any other claimant, unless the failure to provide such timely notice has prejudiced us. However, no claim made by the insured, injured person or other claimant will be invalidated if it shall be shown not to have been reasonably possible to give such timely notice and that notice was given as soon as was reasonably possible thereafter.

## 5. Examination Of Your Books And Records

We may examine and audit your books and records as well as the "contractor's" books and records as they relate to this policy at any time during the policy period and up to three years afterward.

## 6. Inspections And Surveys

a. We have the right to:

- (1) Make inspections and surveys at any time;
- (2) Give you reports on the conditions we find; and
- (3) Recommend changes.

b. We are not obligated to make any inspections, surveys, reports or recommendations and any such actions we do undertake relate only to insurability and the premiums to be charged. We do not make safety inspections. We do not undertake to perform the duty of any person or organization to provide for the health or safety of workers or the public. And we do not warrant that conditions:

- (1) Are safe or healthful; or
- (2) Comply with laws, regulations, codes or standards.

c. Paragraphs 1. and 2. of this condition apply not only to us, but also to any rating, advisory, rate service or similar organization which makes insurance inspections, surveys, reports or recommendations.

d. Paragraph 2. of this condition does not apply to any inspections, surveys, reports or recommendations we may make relative to certification, under state or municipal statutes, ordinances or regulations, of boilers, pressure vessels or elevators.

## 7. Legal Action Against Us

a. Except as provided in Paragraph b. no person or organization has a right under this policy:

- (1) To join us as a party or otherwise bring us into a "suit" asking for damages from an insured; or
- (2) To sue us on this policy unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured; but we will not be liable for damages that are not payable under the terms of this policy or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

b. With respect to "bodily injury" claims, if we deny coverage or do not admit liability because an insured or the injured person, someone acting for the injured person or other claimant fails to give us written notice as soon as practicable, then the injured person, someone acting for the injured person or other claimant may bring an action against us, provided the sole question is whether the denial of coverage or nonadmission of liability is based on the failure to provide timely notice.

However, the injured person, someone acting for the injured person or other claimant may not bring an action if within 60 days after we deny coverage or do not admit liability, we or an insured:

- (1) Brings an action to declare the rights of the parties under the policy; and
- (2) Names the injured person, someone acting for the injured person or other claimant as a party to the action.

## 8. Other Insurance

The insurance afforded by this policy is primary insurance and we will not seek contribution from any other insurance available to you except if the other insurance is provided by a contractor other than the designated "contractor" for the same operation and job location designated in the Declarations.

If the other insurance is available, we will share with that other insurance by the method described below.

If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach, each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

## 9. Premiums

The "contractor":

- a. Is responsible for the payment of all premiums; and
- b. Will be the payee for any return premium we pay.

With respect to the payment and return of premium, the term Named Insured means the "contractor" named in the Declarations.

## 10. Premium Audit

- a. We will compute all premiums for this policy in accordance with our rules and rates.
- b. Premium shown in this policy as advance premium is a deposit premium only. At the close of each audit period we will compute the earned premium for that period. Audit premiums are due and payable on notice to the "contractor". If the sum of the advance and audit premiums paid for the policy term is greater than the earned premium, we will return the excess to the "contractor".
- c. The "contractor" must keep records of the information we need for premium computation, and send us copies at such times as we may request.

## 11. Separation Of Insureds

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this policy to the first Named Insured, this insurance applies:

- a. As if each Named Insured were the only Named Insured; and
- b. Separately to each insured against whom claim is made or "suit" is brought.

## 12. Transfer Of Rights Of Recovery Against Others To Us

If the insured has rights to recover all or part of any payment we have made under this policy, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them.

## 13. Policy Period

This insurance applies only to "bodily injury" or "property damage" which occurs during the policy period. This period terminates when the operations of the "contractor" under the contract designated in the Declarations, are finally accepted by the State of New York, unless the policy is previously terminated in accordance with the provisions of the cancellation condition.

## 14. When We Do Not Renew

If we decide not to renew this Coverage Part, we will mail or deliver to the first Named Insured shown in the Declarations written notice of the nonrenewal not less than 30 days before the expiration date.

If notice is mailed, proof of mailing will be sufficient proof of notice.

## SECTION V – DEFINITIONS

### 1. "Auto" means:

- a. A land motor vehicle, trailer or semitrailer designed for travel on public roads, including any attached machinery or equipment; or
- b. Any other land vehicle that is subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged.

However, "auto" does not include "mobile equipment".

### 2. "Bodily Injury" means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time.

### 3. "Contractor" means the contractor designated in the Declarations.

### 4. "Coverage Territory" means the United States of America (including its territories and possessions), Puerto Rico and Canada.

### 5. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".

### 6. "Hostile fire" means one which becomes uncontrollable or breaks out from where it was intended to be.

### 7. "Impaired property" means tangible property other than "work" performed for you, that cannot be used or is less useful because:

- a. It incorporates "work" performed for you, that is known or thought to be defective, deficient, inadequate or dangerous; or
- b. You have failed to fulfill the terms of a contract or agreement;

if such property can be restored to use by:

- a. The repair, replacement, adjustment or removal of the "work" performed for you; or
- b. Your fulfilling the terms of the contract or agreement.

### 8. "Insured contract" means:

- a. A lease of premises;
- b. A sidetrack agreement;
- c. Any easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;
- d. Any obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality; or
- e. An elevator maintenance agreement.



9. "Leased worker" means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business. "Leased worker" does not include a "temporary worker".

10. "Mobile equipment" means any of the following types of land vehicles, including any attached machinery or equipment:

a. Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;

b. Vehicles maintained for use solely on or next to premises you own or rent;

c. Vehicles that travel on crawler treads;

d. Vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:

(1) Power cranes, shovels, loaders, diggers or drills; or

(2) Road construction or resurfacing equipment such as graders, scrapers or rollers;

e. Vehicles not described in Paragraph a., b., c. or d. above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:

(1) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or

(2) Cherry pickers and similar devices used to raise or lower workers;

f. Vehicles not described in Paragraph a., b., c. or d. above maintained primarily for purposes other than the transportation of persons or cargo.

However, self-propelled vehicles with the following types of permanently attached equipment are not "mobile equipment" but will be considered "autos":

(1) Equipment designed primarily for:

(a) Snow removal;

(b) Road maintenance, but not construction or resurfacing; or

(c) Street cleaning;

(2) Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and

(3) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.

However, "mobile equipment" does not include any land vehicle that is subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged. Land vehicles subject to a compulsory or financial responsibility law or other motor vehicle insurance law are considered "autos".

11. "Occurrence" means an accident including continuous or repeated exposure to substantially the same general harmful conditions.

12. "Pollutants" means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes material to be recycled, reconditioned or reclaimed.

13. "Property damage" means:

a. Physical injury to tangible property, including all resulting loss of use of that property. All such use shall be deemed to occur at the time of the physical injury that caused it; or

b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the "occurrence" that caused it.

14. "Suit" means a civil proceeding in which damages because of "bodily injury" or "property damage" to which this insurance applies are alleged. "Suit" includes:

a. An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent; or

b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent.

15. "Temporary worker" means a person who is furnished to you to substitute for a permanent "employee" on leave or to meet seasonal or short-term workload conditions.

16. "Work" includes materials, parts or equipment furnished in connection with the operations.

# OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE FORM – COVERAGE FOR OPERATIONS OF DESIGNATED CONTRACTOR

Various provisions of this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations. The words "we", "us" and "our" refer to the company providing this insurance.

The word "insured" means any person or organization qualifying as such under Section II – Who Is An Insured.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section V – Definitions.

## SECTION I – COVERAGES

### BODILY INJURY AND PROPERTY DAMAGE LIABILITY

#### 1. Insuring Agreement

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury" or "property damage" to which this insurance does not apply. We may, at our discretion, investigate any "occurrence" and settle any claim or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in Section III – Limits Of Insurance; and
- (2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments.

- b. This insurance applies to "bodily injury" and "property damage" only if:

- (1) The "bodily injury" or "property damage" is caused by an "occurrence" and arises out of:
  - (a) Operations performed for you by the "contractor" at the location specified in the Declarations; or
  - (b) Your acts or omissions in connection with the general supervision of such operations;
- (2) The "bodily injury" or "property damage" occurs during the policy period; and
- (3) Prior to the policy period, no insured listed under Paragraph 1. of Section II – Who Is An Insured and no "employee" authorized by you to give or receive notice of an "occurrence" or claim, knew that the "bodily injury" or "property damage" had occurred, in whole or in part. If such a listed insured or authorized "employee" knew, prior to the policy period, that the "bodily injury" or "property damage" occurred, then any continuation, change or resumption of such "bodily injury" or "property damage" during or after the policy period will be deemed to have been known prior to the policy period.

- c. "Bodily injury" or "property damage" which occurs during the policy period and was not, prior to the policy period, known to have occurred by any insured listed under Paragraph 1. of Section II – Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim, includes any continuation, change or resumption of that "bodily injury" or "property damage" after the end of the policy period.

d. "Bodily injury" or "property damage" will be deemed to have been known to have occurred at the earliest time when any insured listed under Paragraph 1. of Section II – Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim:

- (1) Reports all, or any part, of the "bodily injury" or "property damage" to us or any other insurer;
- (2) Receives a written or verbal demand or claim for damages because of the "bodily injury" or "property damage"; or
- (3) Becomes aware by any other means that "bodily injury" or "property damage" has occurred or has begun to occur.

e. Damages because of "bodily injury" include damages claimed by any person or organization for care, loss of services or death resulting at any time from the "bodily injury".

## 2. Exclusions

This insurance does not apply to:

### a. Expected Or Intended Injury

"Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" resulting from the use of reasonable force to protect persons or property.

### b. Contractual Liability

"Bodily injury" or "property damage" for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages:

- (1) That the insured would have in the absence of the contract or agreement; or
- (2) Assumed in a contract or agreement that is an "insured contract", provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement. Solely for the purposes of liability assumed in an "insured contract", reasonable attorneys' fees and necessary litigation expenses incurred by or for a party other than an insured are deemed to be damages because of "bodily injury" or "property damage", provided:
  - (a) Liability to such party for, or for the cost of, that party's defense has also been assumed in the same "insured contract"; and

(b) Such attorneys' fees and litigation expenses are for defense of that party against a civil or alternative dispute resolution proceeding in which damages to which this insurance applies are alleged.

### c. Work Completed Or Put To Intended Use

"Bodily injury" or "property damage" which occurs after the earlier of the following times:

- (1) When all "work" on the project (other than service, maintenance or repairs) to be performed for you by the "contractor" at the site of the covered operations has been completed; or
- (2) When that portion of the "contractor's" "work", out of which the injury or damage arises, has been put to its intended use by any person or organization, other than another contractor or subcontractor working directly or indirectly for the "contractor" or as part of the same project.

### d. Acts Or Omissions By You And Your Employees

"Bodily injury" or "property damage" arising out of your, or your "employees", acts or omissions other than general supervision of "work" performed for you by the "contractor".

### e. Workers' Compensation And Similar Laws

Any obligation of the insured under a workers' compensation, disability benefits or unemployment compensation law or any similar law.

### f. Employer's Liability

"Bodily injury" to:

- (1) An "employee" of the insured arising out of and in the course of:
  - (a) Employment by the insured; or
  - (b) Performing duties related to the conduct of the insured's business; or
- (2) The spouse, child, parent, brother or sister of that "employee" as a consequence of Paragraph (1) above.

This exclusion applies whether the insured may be liable as an employer or in any other capacity and to any obligation to share damages with or repay someone else who must pay damages because of the injury.

This exclusion does not apply to liability assumed by the insured under an "insured contract".

#### **g. Damage To Property**

"Property damage" to:

- (1) Property you own, rent, or occupy, including any costs or expenses incurred by you, or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property;
- (2) Property loaned to you;
- (3) Personal property in the care, custody or control of the insured; or
- (4) "Work" performed for you by the "contractor".

#### **h. War**

"Bodily injury" or "property damage", however caused, arising, directly or indirectly, out of:

- (1) War, including undeclared or civil war;
- (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- (3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

#### **i. Mobile Equipment**

"Bodily injury" or "property damage" arising out of the use of "mobile equipment" in, or while in practice for, or while being prepared for, any prearranged racing, speed, demolition, or stunting activity.

#### **j. Pollution**

- (1) "Bodily injury" or "property damage" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":
  - (a) At or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to, any insured. However, this subparagraph does not apply to:
    - (i) "Bodily injury" if sustained within a building and caused by smoke, fumes, vapor or soot produced by or originating from equipment that is used to heat, cool or dehumidify the building, or equipment that is used to heat water for personal use, by the building's occupants or their guests;

- (ii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire";
  - (b) At or from any premises, site or location which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste;
  - (c) Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for:
    - (i) Any insured; or
    - (ii) Any person or organization for whom you may be legally responsible; or
  - (d) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the "pollutants" are brought on or to the premises, site or location in connection with such operations by such insured, contractor or subcontractor. However, this subparagraph does not apply to:
    - (i) "Bodily injury" or "property damage" arising out of the escape of fuels, lubricants or other operating fluids which are needed to perform the normal electrical, hydraulic or mechanical functions necessary for the operation of "mobile equipment" or its parts, if such fuels, lubricants or other operating fluids escape from a vehicle part designed to hold, store or receive them. This exception does not apply if the "bodily injury" or "property damage" arises out of the intentional discharge, dispersal or release of the fuels, lubricants or other operating fluids, or if such fuels, lubricants or other operating fluids are brought on or to the premises, site or location with the intent that they be discharged, dispersed or released as part of the operations being performed by such insured, contractor or subcontractor;

- (ii) "Bodily injury" or "property damage" sustained within a building and caused by the release of gases, fumes or vapors from materials brought into that building in connection with operations being performed by or on behalf of any insured; or
- (iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire".
- (e) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "pollutants".
- (2) Any loss, cost or expense arising out of any:
  - (a) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "pollutants"; or
  - (b) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of "pollutants".

However, this paragraph does not apply to liability for damages because of "property damage" that the insured would have in the absence of such request, demand, order or statutory or regulatory requirement, or such claim or "suit" by or on behalf of a governmental authority.

**k. Damage To Impaired Property Or Property Not Physically Injured**

"Property damage" to "impaired property" or property that has not been physically injured, arising out of:

- (1) A defect, deficiency, inadequacy or dangerous condition in "work" performed for you by the "contractor"; or
- (2) A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

This exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical injury to "work" performed for you by the "contractor".

**l. Electronic Data**

Damages arising out of the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate electronic data.

However, this exclusion does not apply to liability for damages because of "bodily injury".

As used in this exclusion, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

**SUPPLEMENTARY PAYMENTS**

- 1. We will pay, with respect to any claim we investigate or settle, or any "suit" against an insured we defend:
  - a. All expenses we incur.
  - b. Up to \$250 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which this insurance applies. We do not have to furnish these bonds.
  - c. The cost of bonds to release attachments, but only for bond amounts within the applicable limit of insurance. We do not have to furnish these bonds.
  - d. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to \$250 a day because of time off from work.
  - e. All court costs taxed against the insured in the "suit". However, these payments do not include attorneys' fees or attorneys' expenses taxed against the insured.
  - f. Prejudgment interest awarded against the insured on that part of the judgment we pay. If we make an offer to pay the applicable limit of insurance, we will not pay any prejudgment interest based on that period of time after the offer.
  - g. All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of insurance.

- h. Expenses incurred by the insured for first aid administered to others at the time of an accident for "bodily injury" to which this insurance applies.

These payments will not reduce the limits of insurance.

- 2. If we defend an insured against a "suit" and an indemnitee of the insured is also named as a party to the "suit", we will defend that indemnitee if all of the following conditions are met:
  - a. The "suit" against the indemnitee seeks damages for which the insured has assumed the liability of the indemnitee in a contract or agreement that is an "insured contract";
  - b. This insurance applies to such liability assumed by the insured;
  - c. The obligation to defend, or the cost of the defense of, that indemnitee, has also been assumed by the insured in the same "insured contract";
  - d. The allegations in the "suit" and the information we know about the "occurrence" are such that no conflict appears to exist between the interests of the insured and the interests of the indemnitee;
  - e. The indemnitee and the insured ask us to conduct and control the defense of that indemnitee against such "suit" and agree that we can assign the same counsel to defend the insured and the indemnitee; and
  - f. The indemnitee:
    - (1) Agrees in writing to:
      - (a) Cooperate with us in the investigation, settlement or defense of the "suit";
      - (b) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the "suit";
      - (c) Notify any other insurer whose coverage is available to the indemnitee; and
      - (d) Cooperate with us with respect to coordinating other applicable insurance available to the indemnitee; and
    - (2) Provides us with written authorization to:
      - (a) Obtain records and other information related to the "suit"; and
      - (b) Conduct and control the defense of the indemnitee in such "suit".

So long as the above conditions are met, attorneys' fees incurred by us in the defense of that indemnitee, necessary litigation expenses incurred by us and necessary litigation expenses incurred by the indemnitee at our request will be paid as Supplementary Payments. Notwithstanding the provisions of Paragraph **2.b.(2)** of Section I – Coverages – Bodily Injury And Property Damage Liability, such payments will not be deemed to be damages for "bodily injury" and "property damage" and will not reduce the limits of insurance.

Our obligation to defend an insured's indemnitee and to pay for attorneys' fees and necessary litigation expenses as Supplementary Payments ends when we have used up the applicable limit of insurance in the payment of judgments or settlements or the conditions set forth above, or the terms of the agreement described in Paragraph f. above, are no longer met.

## **SECTION II – WHO IS AN INSURED**

- 1. If you are designated in the Declarations as:
  - a. An individual, you and your spouse are insureds.
  - b. A partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds, but only with respect to their duties as partners or members of a joint venture.
  - c. A limited liability company, you are an insured. Your members are also insureds, but only with respect to their duties as members of a limited liability company. Your managers are insureds, but only with respect to their duties as your managers.
  - d. An organization other than a partnership, joint venture or limited liability company, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.
- 2. Each of the following is also an insured:
  - a. Any person (other than your "employee") or any organization while acting as your real estate manager.

- b. Any person or organization having proper temporary custody of your property if you die, but only:
  - (1) With respect to liability arising out of the maintenance or use of that property; and
  - (2) Until your legal representative has been appointed.
- c. Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this Coverage Part.

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

### SECTION III – LIMITS OF INSURANCE

1. The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:
  - a. Insureds;
  - b. Claims made or "suits" brought; or
  - c. Persons or organizations making claims or bringing "suits".
2. The Aggregate Limit is the most we will pay for the sum of damages because of all "bodily injury" and "property damage".
3. Subject to Paragraph 2. above, the Each Occurrence Limit is the most we will pay for the sum of damages because of all "bodily injury" and "property damage" arising out of any one "occurrence".

If you designate more than one project in the Declarations, the Aggregate Limit shall apply separately to each project.

The Limits of Insurance of this Coverage Part apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Insurance.

### SECTION IV – CONDITIONS

#### 1. Bankruptcy

Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this Coverage Part.

#### 2. Cancellation

- a. The first Named Insured shown in the Declarations may cancel this policy by mailing or delivering to us advance written notice of cancellation.
- b. We may cancel this policy by mailing or delivering to the first Named Insured and the "contractor" written notice of cancellation at least:
  - (1) 10 days before the effective date of cancellation if we cancel for nonpayment of premium; or
  - (2) 30 days before the effective date of cancellation if we cancel for any other reason.
- c. We will mail or deliver our notices to the first Named Insured's and the "contractor's" last mailing address known to us.
- d. Notice of cancellation will state the effective date of cancellation. The policy period will end on that date.
- e. If this policy is cancelled, we will send the "contractor" any premium refund due. If we cancel, the refund will be pro rata. If the first Named Insured cancels, the refund may be less than pro rata. The cancellation will be effective even if we have not made or offered a refund.
- f. If notice is mailed, proof of mailing will be sufficient proof of notice.

#### 3. Changes

This policy contains all the agreements between you, the "contractor" and us concerning the insurance afforded. The first Named Insured shown in the Declarations and the "contractor" are authorized to make changes in the terms of this policy with our consent. This policy's terms can be amended or waived only by endorsement issued by us and made a part of this policy.

#### 4. Duties In The Event Of Occurrence, Claim Or Suit

- a. You must see to it that we are notified as soon as practicable of an "occurrence" which may result in a claim. To the extent possible, notice should include:
  - (1) How, when and where the "occurrence" took place;
  - (2) The names and addresses of any injured persons and witnesses; and

(3) The nature and location of any injury or damage arising out of the "occurrence".

b. If a claim is made or "suit" is brought against any insured, you must:

(1) Immediately record the specifics of the claim or "suit" and the date received; and

(2) Notify us as soon as practicable.

You must see to it that we receive written notice of the claim or "suit" as soon as practicable.

c. You and any other involved insured must:

(1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";

(2) Authorize us to obtain records and other information;

(3) Cooperate with us in the investigation or settlement of the claim or defense against the "suit"; and

(4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of injury or damage to which this insurance may also apply.

d. No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

## **5. Examination Of Your Books And Records**

We may examine and audit your books and records as well as the "contractor's" books and records as they relate to this policy at any time during the policy period and up to three years afterward.

## **6. Inspections And Surveys**

a. We have the right to:

(1) Make inspections and surveys at any time;

(2) Give you reports on the conditions we find; and

(3) Recommend changes.

b. We are not obligated to make any inspections, surveys, reports or recommendations and any such actions we do undertake relate only to insurability and the premiums to be charged. We do not make safety inspections. We do not undertake to perform the duty of any person or organization to provide for the health or safety of workers or the public. And we do not warrant that conditions:

(1) Are safe or healthful; or

(2) Comply with laws, regulations, codes or standards.

c. Paragraphs a. and b. of this condition apply not only to us, but also to any rating, advisory, rate service or similar organization which makes insurance inspections, surveys, reports or recommendations.

d. Paragraph b. of this condition does not apply to any inspections, surveys, reports or recommendations we may make relative to certification, under state or municipal statutes, ordinances or regulations, of boilers, pressure vessels or elevators.

## **7. Legal Action Against Us**

No person or organization has a right under this Coverage Part:

a. To join us as a party or otherwise bring us into a "suit" asking for damages from an insured; or

b. To sue us on this Coverage Part unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured; but we will not be liable for damages that are not payable under the terms of this Coverage Part or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

## **8. Other Insurance**

The insurance afforded by this Coverage Part is primary insurance and we will not seek contribution from any other insurance available to you unless the other insurance is provided by a contractor other than the designated "contractor" for the same operation and job location designated in the Declarations. Then we will share with that other insurance by the method described below.

If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach, each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

## **9. Premiums**

The "contractor":

a. Is responsible for the payment of all premiums; and



- b. Will be the payee for any return premiums we pay.

#### 10. Premium Audit

- a. We will compute all premiums for this Coverage Part in accordance with our rules and rates.
- b. Premium shown in this Coverage Part as advance premium is a deposit premium only. At the close of each audit period we will compute the earned premium for that period and send notice to the "contractor". The due date for audit and retrospective premiums is the date shown as the due date on the bill. If the sum of the advance and audit premiums paid for the policy period is greater than the earned premium, we will return the excess to the "contractor".
- c. The "contractor" must keep records of the information we need for premium computation, and send us copies at such times as we may request.

#### 11. Separation Of Insureds

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this Coverage Part to the first Named Insured, this insurance applies:

- a. As if each Named Insured were the only Named Insured; and
- b. Separately to each insured against whom claim is made or "suit" is brought.

#### 12. Transfer Of Rights Of Recovery Against Others To Us

If the insured has rights to recover all or part of any payment we have made under this Coverage Part those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them.

#### 13. When We Do Not Renew

If we decide not to renew this Coverage Part, we will mail or deliver to the first Named Insured shown in the Declarations written notice of the nonrenewal not less than 30 days before the expiration date.

If notice is mailed, proof of mailing will be sufficient proof of notice.

### SECTION V – DEFINITIONS

#### 1. "Auto" means:

- a. A land motor vehicle, trailer or semitrailer designed for travel on public roads, including any attached machinery or equipment; or

- b. Any other land vehicle that is subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged.

However, "auto" does not include "mobile equipment".

- 2. "Bodily injury" means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time.
- 3. "Contractor" means the contractor designated in the Declarations.
- 4. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".
- 5. "Executive officer" means a person holding any of the officer positions created by your charter, constitution, bylaws or any other similar governing document.
- 6. "Hostile fire" means one which becomes uncontrollable or breaks out from where it was intended to be.
- 7. "Impaired property" means tangible property, other than work performed for you, that cannot be used or is less useful because:
  - a. It incorporates work performed for you that is known or thought to be defective, deficient, inadequate or dangerous; or
  - b. You have failed to fulfill the terms of a contract or agreement;
 if such property can be restored to use by the repair, replacement, adjustment or removal of the work performed for you or your fulfilling the terms of the contract or agreement.
- 8. "Insured contract" means:
  - a. A lease of premises;
  - b. A sidetrack agreement;
  - c. Any easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;
  - d. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality; or
  - e. An elevator maintenance agreement.
- 9. "Leased worker" means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business. "Leased worker" does not include a "temporary worker".

**10.** "Mobile equipment" means any of the following types of land vehicles, including any attached machinery or equipment:

- a.** Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
- b.** Vehicles maintained for use solely on or next to premises you own or rent;
- c.** Vehicles that travel on crawler treads;
- d.** Vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:
  - (1)** Power cranes, shovels, loaders, diggers or drills; or
  - (2)** Road construction or resurfacing equipment such as graders, scrapers or rollers;
- e.** Vehicles not described in Paragraph **a.**, **b.**, **c.** or **d.** above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
  - (1)** Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or
  - (2)** Cherry pickers and similar devices used to raise or lower workers;
- f.** Vehicles not described in Paragraph **a.**, **b.**, **c.** or **d.** above maintained primarily for purposes other than the transportation of persons or cargo.

However, self-propelled vehicles with the following types of permanently attached equipment are not "mobile equipment" but will be considered "autos":

- (1)** Equipment designed primarily for:
  - (a)** Snow removal;
  - (b)** Road maintenance, but not construction or resurfacing; or
  - (c)** Street cleaning;
- (2)** Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and
- (3)** Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.

However, "mobile equipment" does not include land vehicles that are subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged. Land vehicles subject to a compulsory or financial responsibility law or other motor vehicle insurance law are considered "autos".

**11.** "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.

**12.** "Pollutants" mean any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

**13.** "Property damage" means:

- a.** Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
- b.** Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the "occurrence" that caused it.

For the purposes of this insurance, electronic data is not tangible property.

As used in this definition, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from, computer software, including systems and applications software, hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

**14.** "Suit" means a civil proceeding, brought in the United States of America (including its territories and possessions), Puerto Rico or Canada, in which damages because of "bodily injury" or "property damage" to which this insurance applies are alleged. "Suit" includes:

- a.** An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent; or
- b.** Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent.

**15.** "Temporary worker" means a person who is furnished to you to substitute for a permanent "employee" on leave or to meet seasonal or short-term workload conditions.

**16.** "Work" includes materials, parts or equipment furnished in connection with the operations.

POLICY NUMBER:

COMMERCIAL GENERAL LIABILITY  
CG 02 24 10 93

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **EARLIER NOTICE OF CANCELLATION PROVIDED BY US**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART  
LIQUOR LIABILITY COVERAGE PART  
POLLUTION LIABILITY COVERAGE PART  
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

### **SCHEDULE**

**Number of Days' Notice** \_\_\_\_\_

(If no entry appears above, information required to complete this Schedule will be shown in the Declarations as applicable to this endorsement.)

For any statutorily permitted reason other than nonpayment of premium, the number of days required for notice of cancellation, as provided in paragraph 2. of either the CANCELLATION Common Policy Condition or as amended by an applicable state cancellation endorsement, is increased to the number of days shown in the Schedule above.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**ADDITIONAL INSURED – OWNERS, LESSEES OR  
CONTRACTORS – AUTOMATIC STATUS FOR OTHER  
PARTIES WHEN REQUIRED IN WRITTEN  
CONSTRUCTION AGREEMENT**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

**A. Section II – Who Is An Insured** is amended to include as an additional insured:

1. Any person or organization for whom you are performing operations when you and such person or organization have agreed in writing in a contract or agreement that such person or organization be added as an additional insured on your policy; and
2. Any other person or organization you are required to add as an additional insured under the contract or agreement described in Paragraph 1. above.

Such person(s) or organization(s) is an additional insured only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

- a. Your acts or omissions; or
- b. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured described in Paragraph 1. or 2. above.

However, the insurance afforded to such additional insured described above:

- a. Only applies to the extent permitted by law; and
- b. Will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

A person's or organization's status as an additional insured under this endorsement ends when your operations for the person or organization described in Paragraph 1. above are completed.

**B.** With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to:

1. "Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:
  - a. The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
  - b. Supervisory, inspection, architectural or engineering activities.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage", or the offense which caused the "personal and advertising injury", involved the rendering of, or the failure to render, any professional architectural, engineering or surveying services.

2. "Bodily injury" or "property damage" occurring after:
  - a. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or

b. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

C. With respect to the insurance afforded to these additional insureds, the following is added to **Section III – Limits Of Insurance:**

The most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement described in Paragraph A.1.; or

2. Available under the applicable limits of insurance;  
whichever is less.

This endorsement shall not increase the applicable limits of insurance.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – SCHEDULED PERSON OR ORGANIZATION**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

### **SCHEDULE**

Name Of Additional Insured Person(s) Or Organization(s)	Location(s) Of Covered Operations
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

**A. Section II – Who Is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured(s) at the location(s) designated above.

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

**B.** With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to "bodily injury" or "property damage" occurring after:

1. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
2. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

- C. With respect to the insurance afforded to these additional insureds, the following is added to **Section III – Limits Of Insurance:**

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or

2. Available under the applicable limits of insurance;  
whichever is less.

This endorsement shall not increase the applicable limits of insurance.

Sample

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – COMPLETED OPERATIONS**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART  
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

### **SCHEDULE**

Name Of Additional Insured Person(s) Or Organization(s)	Location And Description Of Completed Operations
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

**A. Section II – Who Is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by "your work" at the location designated and described in the Schedule of this endorsement performed for that additional insured and included in the "products-completed operations hazard".

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

**B. With respect to the insurance afforded to these additional insureds, the following is added to Section III – Limits Of Insurance:**

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or
2. Available under the applicable limits of insurance;

whichever is less.

This endorsement shall not increase the applicable limits of insurance.



**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **DESIGNATED INSURED FOR COVERED AUTOS LIABILITY COVERAGE**

This endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM  
BUSINESS AUTO COVERAGE FORM  
MOTOR CARRIER COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by this endorsement.

This endorsement identifies person(s) or organization(s) who are "insureds" for Covered Autos Liability Coverage under the Who Is An Insured provision of the Coverage Form. This endorsement does not alter coverage provided in the Coverage Form.

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below.

**Named Insured:**

**Endorsement Effective Date:**

### **SCHEDULE**

**Name Of Person(s) Or Organization(s):**

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

Each person or organization shown in the Schedule is an "insured" for Covered Autos Liability Coverage, but only to the extent that person or organization qualifies as an "insured" under the Who Is An Insured provision contained in Paragraph **A.1.** of Section **II** – Covered Autos Liability Coverage in the Business Auto and Motor Carrier Coverage Forms and Paragraph **D.2.** of Section **I** – Covered Autos Coverages of the Auto Dealers Coverage Form.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **AMENDMENT OF INSURED CONTRACT DEFINITION**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART  
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

The definition of "insured contract" in the **Definitions** section is replaced by the following:

"Insured contract" means:

- a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner is not an "insured contract";
- b. A sidetrack agreement;
- c. Any easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;
- d. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
- e. An elevator maintenance agreement;
- f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization, provided the "bodily injury" or "property damage" is caused, in whole or in part, by you or by those acting on your behalf. However, such part of a contract or agreement shall only be considered an "insured contract" to the extent your assumption of the tort liability is permitted by law. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

Paragraph f. does not include that part of any contract or agreement:

- (1) That indemnifies a railroad for "bodily injury" or "property damage" arising out of construction or demolition operations, within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road-beds, tunnel, underpass or crossing;
- (2) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
  - (a) Preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
  - (b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage; or
- (3) Under which the insured, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in (2) above and supervisory, inspection, architectural or engineering activities.

## CAUSES OF LOSS – SPECIAL FORM

Words and phrases that appear in quotation marks have special meaning. Refer to Section **G. Definitions**.

### A. Covered Causes Of Loss

When Special is shown in the Declarations, Covered Causes of Loss means direct physical loss unless the loss is excluded or limited in this policy.

### B. Exclusions

1. We will not pay for loss or damage caused directly or indirectly by any of the following. Such loss or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss.

#### a. Ordinance Or Law

The enforcement of or compliance with any ordinance or law:

- (1) Regulating the construction, use or repair of any property; or
- (2) Requiring the tearing down of any property, including the cost of removing its debris.

This exclusion, Ordinance Or Law, applies whether the loss results from:

- (a) An ordinance or law that is enforced even if the property has not been damaged; or
- (b) The increased costs incurred to comply with an ordinance or law in the course of construction, repair, renovation, remodeling or demolition of property, or removal of its debris, following a physical loss to that property.

#### b. Earth Movement

- (1) Earthquake, including tremors and aftershocks and any earth sinking, rising or shifting related to such event;
- (2) Landslide, including any earth sinking, rising or shifting related to such event;
- (3) Mine subsidence, meaning subsidence of a man-made mine, whether or not mining activity has ceased;

- (4) Earth sinking (other than sinkhole collapse), rising or shifting including soil conditions which cause settling, cracking or other disarrangement of foundations or other parts of realty. Soil conditions include contraction, expansion, freezing, thawing, erosion, improperly compacted soil and the action of water under the ground surface.

But if Earth Movement, as described in **b.(1)** through **(4)** above, results in fire or explosion, we will pay for the loss or damage caused by that fire or explosion.

- (5) Volcanic eruption, explosion or effusion. But if volcanic eruption, explosion or effusion results in fire, building glass breakage or Volcanic Action, we will pay for the loss or damage caused by that fire, building glass breakage or Volcanic Action.

Volcanic Action means direct loss or damage resulting from the eruption of a volcano when the loss or damage is caused by:

- (a) Airborne volcanic blast or airborne shock waves;
- (b) Ash, dust or particulate matter; or
- (c) Lava flow.

With respect to coverage for Volcanic Action as set forth in **(5)(a)**, **(5)(b)** and **(5)(c)**, all volcanic eruptions that occur within any 168-hour period will constitute a single occurrence.

Volcanic Action does not include the cost to remove ash, dust or particulate matter that does not cause direct physical loss or damage to the described property.

This exclusion applies regardless of whether any of the above, in Paragraphs **(1)** through **(5)**, is caused by an act of nature or is otherwise caused.

**c. Governmental Action**

Seizure or destruction of property by order of governmental authority.

But we will pay for loss or damage caused by or resulting from acts of destruction ordered by governmental authority and taken at the time of a fire to prevent its spread, if the fire would be covered under this Coverage Part.

**d. Nuclear Hazard**

Nuclear reaction or radiation, or radioactive contamination, however caused.

But if nuclear reaction or radiation, or radioactive contamination, results in fire, we will pay for the loss or damage caused by that fire.

**e. Utility Services**

The failure of power, communication, water or other utility service supplied to the described premises, however caused, if the failure:

- (1) Originates away from the described premises; or
- (2) Originates at the described premises, but only if such failure involves equipment used to supply the utility service to the described premises from a source away from the described premises.

Failure of any utility service includes lack of sufficient capacity and reduction in supply.

Loss or damage caused by a surge of power is also excluded, if the surge would not have occurred but for an event causing a failure of power.

But if the failure or surge of power, or the failure of communication, water or other utility service, results in a Covered Cause of Loss, we will pay for the loss or damage caused by that Covered Cause of Loss.

Communication services include but are not limited to service relating to Internet access or access to any electronic, cellular or satellite network.

**f. War And Military Action**

- (1) War, including undeclared or civil war;

- (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or

- (3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

**g. Water**

- (1) Flood, surface water, waves (including tidal wave and tsunami), tides, tidal water, overflow of any body of water, or spray from any of these, all whether or not driven by wind (including storm surge);

- (2) Mudslide or mudflow;

- (3) Water that backs up or overflows or is otherwise discharged from a sewer, drain, sump, sump pump or related equipment;

- (4) Water under the ground surface pressing on, or flowing or seeping through:

- (a) Foundations, walls, floors or paved surfaces;
- (b) Basements, whether paved or not; or
- (c) Doors, windows or other openings; or

- (5) Waterborne material carried or otherwise moved by any of the water referred to in Paragraph (1), (3) or (4), or material carried or otherwise moved by mudslide or mudflow.

This exclusion applies regardless of whether any of the above, in Paragraphs (1) through (5), is caused by an act of nature or is otherwise caused. An example of a situation to which this exclusion applies is the situation where a dam, levee, seawall or other boundary or containment system fails in whole or in part, for any reason, to contain the water.

But if any of the above, in Paragraphs (1) through (5), results in fire, explosion or sprinkler leakage, we will pay for the loss or damage caused by that fire, explosion or sprinkler leakage (if sprinkler leakage is a Covered Cause of Loss).

**h. "Fungus", Wet Rot, Dry Rot And Bacteria**

Presence, growth, proliferation, spread or any activity of "fungus", wet or dry rot or bacteria.

But if "fungus", wet or dry rot or bacteria result in a "specified cause of loss", we will pay for the loss or damage caused by that "specified cause of loss".

This exclusion does not apply:

- (1) When "fungus", wet or dry rot or bacteria result from fire or lightning; or
- (2) To the extent that coverage is provided in the Additional Coverage, Limited Coverage For "Fungus", Wet Rot, Dry Rot And Bacteria, with respect to loss or damage by a cause of loss other than fire or lightning.

Exclusions **B.1.a.** through **B.1.h.** apply whether or not the loss event results in widespread damage or affects a substantial area.

**2. We will not pay for loss or damage caused by or resulting from any of the following:**

**a. Artificially generated electrical, magnetic or electromagnetic energy that damages, disturbs, disrupts or otherwise interferes with any:**

- (1) Electrical or electronic wire, device, appliance, system or network; or
- (2) Device, appliance, system or network utilizing cellular or satellite technology.

For the purpose of this exclusion, electrical, magnetic or electromagnetic energy includes but is not limited to:

- (a) Electrical current, including arcing;
- (b) Electrical charge produced or conducted by a magnetic or electromagnetic field;
- (c) Pulse of electromagnetic energy; or
- (d) Electromagnetic waves or microwaves.

But if fire results, we will pay for the loss or damage caused by that fire.

- b. Delay, loss of use or loss of market.**
- c. Smoke, vapor or gas from agricultural smudging or industrial operations.**

**d.(1) Wear and tear;**

(2) Rust or other corrosion, decay, deterioration, hidden or latent defect or any quality in property that causes it to damage or destroy itself;

(3) Smog;

(4) Settling, cracking, shrinking or expansion;

(5) Nesting or infestation, or discharge or release of waste products or secretions, by insects, birds, rodents or other animals.

(6) Mechanical breakdown, including rupture or bursting caused by centrifugal force. But if mechanical breakdown results in elevator collision, we will pay for the loss or damage caused by that elevator collision.

(7) The following causes of loss to personal property:

(a) Dampness or dryness of atmosphere;

(b) Changes in or extremes of temperature; or

(c) Marring or scratching.

But if an excluded cause of loss that is listed in **2.d.(1)** through **(7)** results in a "specified cause of loss" or building glass breakage, we will pay for the loss or damage caused by that "specified cause of loss" or building glass breakage.

**e. Explosion of steam boilers, steam pipes, steam engines or steam turbines owned or leased by you, or operated under your control. But if explosion of steam boilers, steam pipes, steam engines or steam turbines results in fire or combustion explosion, we will pay for the loss or damage caused by that fire or combustion explosion. We will also pay for loss or damage caused by or resulting from the explosion of gases or fuel within the furnace of any fired vessel or within the flues or passages through which the gases of combustion pass.**

**f. Continuous or repeated seepage or leakage of water, or the presence or condensation of humidity, moisture or vapor, that occurs over a period of 14 days or more.**

- g.** Water, other liquids, powder or molten material that leaks or flows from plumbing, heating, air conditioning or other equipment (except fire protective systems) caused by or resulting from freezing, unless:

- (1)** You do your best to maintain heat in the building or structure; or
- (2)** You drain the equipment and shut off the supply if the heat is not maintained.

- h.** Dishonest or criminal act (including theft) by you, any of your partners, members, officers, managers, employees (including temporary employees and leased workers), directors, trustees or authorized representatives, whether acting alone or in collusion with each other or with any other party; or theft by any person to whom you entrust the property for any purpose, whether acting alone or in collusion with any other party.

This exclusion:

- (1)** Applies whether or not an act occurs during your normal hours of operation;
  - (2)** Does not apply to acts of destruction by your employees (including temporary employees and leased workers) or authorized representatives; but theft by your employees (including temporary employees and leased workers) or authorized representatives is not covered.
- i.** Voluntary parting with any property by you or anyone else to whom you have entrusted the property if induced to do so by any fraudulent scheme, trick, device or false pretense.
- j.** Rain, snow, ice or sleet to personal property in the open.
- k.** Collapse, including any of the following conditions of property or any part of the property:
- (1)** An abrupt falling down or caving in;
  - (2)** Loss of structural integrity, including separation of parts of the property or property in danger of falling down or caving in; or
  - (3)** Any cracking, bulging, sagging, bending, leaning, settling, shrinkage or expansion as such condition relates to **(1)** or **(2)** above.

But if collapse results in a Covered Cause of Loss at the described premises, we will pay for the loss or damage caused by that Covered Cause of Loss.

This exclusion, **k.**, does not apply:

- (a)** To the extent that coverage is provided under the Additional Coverage, Collapse; or
  - (b)** To collapse caused by one or more of the following:
    - (i)** The "specified causes of loss";
    - (ii)** Breakage of building glass;
    - (iii)** Weight of rain that collects on a roof; or
    - (iv)** Weight of people or personal property.
  - l.** Discharge, dispersal, seepage, migration, release or escape of "pollutants" unless the discharge, dispersal, seepage, migration, release or escape is itself caused by any of the "specified causes of loss". But if the discharge, dispersal, seepage, migration, release or escape of "pollutants" results in a "specified cause of loss", we will pay for the loss or damage caused by that "specified cause of loss".
- This exclusion, **l.**, does not apply to damage to glass caused by chemicals applied to the glass.
- m.** Neglect of an insured to use all reasonable means to save and preserve property from further damage at and after the time of loss.
- 3.** We will not pay for loss or damage caused by or resulting from any of the following, **3.a.** through **3.c.** But if an excluded cause of loss that is listed in **3.a.** through **3.c.** results in a Covered Cause of Loss, we will pay for the loss or damage caused by that Covered Cause of Loss.
- a.** Weather conditions. But this exclusion only applies if weather conditions contribute in any way with a cause or event excluded in Paragraph **1.** above to produce the loss or damage.
  - b.** Acts or decisions, including the failure to act or decide, of any person, group, organization or governmental body.
  - c.** Faulty, inadequate or defective:
    - (1)** Planning, zoning, development, surveying, siting;
    - (2)** Design, specifications, workmanship, repair, construction, renovation, remodeling, grading, compaction;
    - (3)** Materials used in repair, construction, renovation or remodeling; or
    - (4)** Maintenance;

of part or all of any property on or off the described premises.

#### **4. Special Exclusions**

The following provisions apply only to the specified Coverage Forms:

##### **a. Business Income (And Extra Expense) Coverage Form, Business Income (Without Extra Expense) Coverage Form, Or Extra Expense Coverage Form**

We will not pay for:

- (1) Any loss caused by or resulting from:
  - (a) Damage or destruction of "finished stock"; or
  - (b) The time required to reproduce "finished stock".This exclusion does not apply to Extra Expense.
- (2) Any loss caused by or resulting from direct physical loss or damage to radio or television antennas (including satellite dishes) and their lead-in wiring, masts or towers.
- (3) Any increase of loss caused by or resulting from:
  - (a) Delay in rebuilding, repairing or replacing the property or resuming "operations", due to interference at the location of the rebuilding, repair or replacement by strikers or other persons; or
  - (b) Suspension, lapse or cancellation of any license, lease or contract. But if the suspension, lapse or cancellation is directly caused by the "suspension" of "operations", we will cover such loss that affects your Business Income during the "period of restoration" and any extension of the "period of restoration" in accordance with the terms of the Extended Business Income Additional Coverage and the Extended Period Of Indemnity Optional Coverage or any variation of these.
- (4) Any Extra Expense caused by or resulting from suspension, lapse or cancellation of any license, lease or contract beyond the "period of restoration".
- (5) Any other consequential loss.

##### **b. Leasehold Interest Coverage Form**

- (1) Paragraph **B.1.a.**, Ordinance Or Law, does not apply to insurance under this Coverage Form.
- (2) We will not pay for any loss caused by:
  - (a) Your cancelling the lease;
  - (b) The suspension, lapse or cancellation of any license; or
  - (c) Any other consequential loss.

##### **c. Legal Liability Coverage Form**

- (1) The following exclusions do not apply to insurance under this Coverage Form:
  - (a) Paragraph **B.1.a.** Ordinance Or Law;
  - (b) Paragraph **B.1.c.** Governmental Action;
  - (c) Paragraph **B.1.d.** Nuclear Hazard;
  - (d) Paragraph **B.1.e.** Utility Services; and
  - (e) Paragraph **B.1.f.** War And Military Action.
- (2) The following additional exclusions apply to insurance under this Coverage Form:

##### **(a) Contractual Liability**

We will not defend any claim or "suit", or pay damages that you are legally liable to pay, solely by reason of your assumption of liability in a contract or agreement. But this exclusion does not apply to a written lease agreement in which you have assumed liability for building damage resulting from an actual or attempted burglary or robbery, provided that:

- (i) Your assumption of liability was executed prior to the accident; and
- (ii) The building is Covered Property under this Coverage Form.

##### **(b) Nuclear Hazard**

We will not defend any claim or "suit", or pay any damages, loss, expense or obligation, resulting from nuclear reaction or radiation, or radioactive contamination, however caused.

## 5. Additional Exclusion

The following provisions apply only to the specified property:

### Loss Or Damage To Products

We will not pay for loss or damage to any merchandise, goods or other product caused by or resulting from error or omission by any person or entity (including those having possession under an arrangement where work or a portion of the work is outsourced) in any stage of the development, production or use of the product, including planning, testing, processing, packaging, installation, maintenance or repair. This exclusion applies to any effect that compromises the form, substance or quality of the product. But if such error or omission results in a Covered Cause of Loss, we will pay for the loss or damage caused by that Covered Cause of Loss.

## C. Limitations

The following limitations apply to all policy forms and endorsements, unless otherwise stated:

1. We will not pay for loss of or damage to property, as described and limited in this section. In addition, we will not pay for any loss that is a consequence of loss or damage as described and limited in this section.
  - a. Steam boilers, steam pipes, steam engines or steam turbines caused by or resulting from any condition or event inside such equipment. But we will pay for loss of or damage to such equipment caused by or resulting from an explosion of gases or fuel within the furnace of any fired vessel or within the flues or passages through which the gases of combustion pass.
  - b. Hot water boilers or other water heating equipment caused by or resulting from any condition or event inside such boilers or equipment, other than an explosion.
  - c. The interior of any building or structure, or to personal property in the building or structure, caused by or resulting from rain, snow, sleet, ice, sand or dust, whether driven by wind or not, unless:
    - (1) The building or structure first sustains damage by a Covered Cause of Loss to its roof or walls through which the rain, snow, sleet, ice, sand or dust enters; or
    - (2) The loss or damage is caused by or results from thawing of snow, sleet or ice on the building or structure.
- d. Building materials and supplies not attached as part of the building or structure, caused by or resulting from theft.

However, this limitation does not apply to:

  - (1) Building materials and supplies held for sale by you, unless they are insured under the Builders Risk Coverage Form; or
  - (2) Business Income Coverage or Extra Expense Coverage.
- e. Property that is missing, where the only evidence of the loss or damage is a shortage disclosed on taking inventory, or other instances where there is no physical evidence to show what happened to the property.
- f. Property that has been transferred to a person or to a place outside the described premises on the basis of unauthorized instructions.
- g. Lawns, trees, shrubs or plants which are part of a vegetated roof, caused by or resulting from:
  - (1) Dampness or dryness of atmosphere or of soil supporting the vegetation;
  - (2) Changes in or extremes of temperature;
  - (3) Disease;
  - (4) Frost or hail; or
  - (5) Rain, snow, ice or sleet.
2. We will not pay for loss of or damage to the following types of property unless caused by the "specified causes of loss" or building glass breakage:
  - a. Animals, and then only if they are killed or their destruction is made necessary.
  - b. Fragile articles such as statuary, marbles, chinaware and porcelains, if broken. This restriction does not apply to:
    - (1) Glass; or
    - (2) Containers of property held for sale.
  - c. Builders' machinery, tools and equipment owned by you or entrusted to you, provided such property is Covered Property.

However, this limitation does not apply:

    - (1) If the property is located on or within 100 feet of the described premises, unless the premises is insured under the Builders Risk Coverage Form; or



(2) To Business Income Coverage or to Extra Expense Coverage.

3. The special limit shown for each category, **a.** through **d.**, is the total limit for loss of or damage to all property in that category. The special limit applies to any one occurrence of theft, regardless of the types or number of articles that are lost or damaged in that occurrence. The special limits are (unless a higher limit is shown in the Declarations):

- a.** \$2,500 for furs, fur garments and garments trimmed with fur.
- b.** \$2,500 for jewelry, watches, watch movements, jewels, pearls, precious and semiprecious stones, bullion, gold, silver, platinum and other precious alloys or metals. This limit does not apply to jewelry and watches worth \$100 or less per item.
- c.** \$2,500 for patterns, dies, molds and forms.
- d.** \$250 for stamps, tickets, including lottery tickets held for sale, and letters of credit.

These special limits are part of, not in addition to, the Limit of Insurance applicable to the Covered Property.

This limitation, **C.3.**, does not apply to Business Income Coverage or to Extra Expense Coverage.

4. We will not pay the cost to repair any defect to a system or appliance from which water, other liquid, powder or molten material escapes. But we will pay the cost to repair or replace damaged parts of fire-extinguishing equipment if the damage:

- a.** Results in discharge of any substance from an automatic fire protection system; or
- b.** Is directly caused by freezing.

However, this limitation does not apply to Business Income Coverage or to Extra Expense Coverage.

#### **D. Additional Coverage – Collapse**

The coverage provided under this Additional Coverage, Collapse, applies only to an abrupt collapse as described and limited in **D.1.** through **D.7.**

1. For the purpose of this Additional Coverage, Collapse, abrupt collapse means an abrupt falling down or caving in of a building or any part of a building with the result that the building or part of the building cannot be occupied for its intended purpose.

2. We will pay for direct physical loss or damage to Covered Property, caused by abrupt collapse of a building or any part of a building that is insured under this Coverage Form or that contains Covered Property insured under this Coverage Form, if such collapse is caused by one or more of the following:

- a.** Building decay that is hidden from view, unless the presence of such decay is known to an insured prior to collapse;
- b.** Insect or vermin damage that is hidden from view, unless the presence of such damage is known to an insured prior to collapse;
- c.** Use of defective material or methods in construction, remodeling or renovation if the abrupt collapse occurs during the course of the construction, remodeling or renovation.
- d.** Use of defective material or methods in construction, remodeling or renovation if the abrupt collapse occurs after the construction, remodeling or renovation is complete, but only if the collapse is caused in part by:

- (1) A cause of loss listed in **2.a.** or **2.b.**;
- (2) One or more of the "specified causes of loss";
- (3) Breakage of building glass;
- (4) Weight of people or personal property; or
- (5) Weight of rain that collects on a roof.

3. This **Additional Coverage – Collapse** does not apply to:

- a.** A building or any part of a building that is in danger of falling down or caving in;
- b.** A part of a building that is standing, even if it has separated from another part of the building; or
- c.** A building that is standing or any part of a building that is standing, even if it shows evidence of cracking, bulging, sagging, bending, leaning, settling, shrinkage or expansion.

4. With respect to the following property:

- a.** Outdoor radio or television antennas (including satellite dishes) and their lead-in wiring, masts or towers;

- b. Awnings, gutters and downspouts;
  - c. Yard fixtures;
  - d. Outdoor swimming pools;
  - e. Fences;
  - f. Piers, wharves and docks;
  - g. Beach or diving platforms or appurtenances;
  - h. Retaining walls; and
  - i. Walks, roadways and other paved surfaces;
- if an abrupt collapse is caused by a cause of loss listed in **2.a.** through **2.d.**, we will pay for loss or damage to that property only if:

- (1) Such loss or damage is a direct result of the abrupt collapse of a building insured under this Coverage Form; and
- (2) The property is Covered Property under this Coverage Form.

5. If personal property abruptly falls down or caves in and such collapse is **not** the result of abrupt collapse of a building, we will pay for loss or damage to Covered Property caused by such collapse of personal property only if:
- a. The collapse of personal property was caused by a cause of loss listed in **2.a.** through **2.d.**;
  - b. The personal property which collapses is inside a building; and
  - c. The property which collapses is not of a kind listed in **4.**, regardless of whether that kind of property is considered to be personal property or real property.

The coverage stated in this Paragraph **5.** does not apply to personal property if marring and/or scratching is the only damage to that personal property caused by the collapse.

- 6. This Additional Coverage, Collapse, does not apply to personal property that has not abruptly fallen down or caved in, even if the personal property shows evidence of cracking, bulging, sagging, bending, leaning, settling, shrinkage or expansion.
- 7. This Additional Coverage, Collapse, will not increase the Limits of Insurance provided in this Coverage Part.
- 8. The term Covered Cause of Loss includes the Additional Coverage, Collapse, as described and limited in **D.1.** through **D.7.**

#### **E. Additional Coverage – Limited Coverage For "Fungus", Wet Rot, Dry Rot And Bacteria**

1. The coverage described in **E.2.** and **E.6.** only applies when the "fungus", wet or dry rot or bacteria are the result of one or more of the following causes that occur during the policy period and only if all reasonable means were used to save and preserve the property from further damage at the time of and after that occurrence:

- a. A "specified cause of loss" other than fire or lightning; or
- b. Flood, if the Flood Coverage Endorsement applies to the affected premises.

This Additional Coverage does not apply to lawns, trees, shrubs or plants which are part of a vegetated roof.

2. We will pay for loss or damage by "fungus", wet or dry rot or bacteria. As used in this Limited Coverage, the term loss or damage means:
- a. Direct physical loss or damage to Covered Property caused by "fungus", wet or dry rot or bacteria, including the cost of removal of the "fungus", wet or dry rot or bacteria;
  - b. The cost to tear out and replace any part of the building or other property as needed to gain access to the "fungus", wet or dry rot or bacteria; and
  - c. The cost of testing performed after removal, repair, replacement or restoration of the damaged property is completed, provided there is a reason to believe that "fungus", wet or dry rot or bacteria are present.
3. The coverage described under **E.2.** of this Limited Coverage is limited to \$15,000. Regardless of the number of claims, this limit is the most we will pay for the total of all loss or damage arising out of all occurrences of "specified causes of loss" (other than fire or lightning) and Flood which take place in a 12-month period (starting with the beginning of the present annual policy period). With respect to a particular occurrence of loss which results in "fungus", wet or dry rot or bacteria, we will not pay more than a total of \$15,000 even if the "fungus", wet or dry rot or bacteria continue to be present or active, or recur, in a later policy period.

4. The coverage provided under this Limited Coverage does not increase the applicable Limit of Insurance on any Covered Property. If a particular occurrence results in loss or damage by "fungus", wet or dry rot or bacteria, and other loss or damage, we will not pay more, for the total of all loss or damage, than the applicable Limit of Insurance on the affected Covered Property.

If there is covered loss or damage to Covered Property, not caused by "fungus", wet or dry rot or bacteria, loss payment will not be limited by the terms of this Limited Coverage, except to the extent that "fungus", wet or dry rot or bacteria cause an increase in the loss. Any such increase in the loss will be subject to the terms of this Limited Coverage.

5. The terms of this Limited Coverage do not increase or reduce the coverage provided under Paragraph F.2. (Water Damage, Other Liquids, Powder Or Molten Material Damage) of this Causes Of Loss form or under the Additional Coverage, Collapse.
6. The following, 6.a. or 6.b., applies only if Business Income and/or Extra Expense Coverage applies to the described premises and only if the "suspension" of "operations" satisfies all terms and conditions of the applicable Business Income and/or Extra Expense Coverage Form:
- a. If the loss which resulted in "fungus", wet or dry rot or bacteria does not in itself necessitate a "suspension" of "operations", but such "suspension" is necessary due to loss or damage to property caused by "fungus", wet or dry rot or bacteria, then our payment under Business Income and/or Extra Expense is limited to the amount of loss and/or expense sustained in a period of not more than 30 days. The days need not be consecutive.
  - b. If a covered "suspension" of "operations" was caused by loss or damage other than "fungus", wet or dry rot or bacteria but remediation of "fungus", wet or dry rot or bacteria prolongs the "period of restoration", we will pay for loss and/or expense sustained during the delay (regardless of when such a delay occurs during the "period of restoration"), but such coverage is limited to 30 days. The days need not be consecutive.

## **F. Additional Coverage Extensions**

### **1. Property In Transit**

This Extension applies only to your personal property to which this form applies.

- a. You may extend the insurance provided by this Coverage Part to apply to your personal property (other than property in the care, custody or control of your salespersons) in transit more than 100 feet from the described premises. Property must be in or on a motor vehicle you own, lease or operate while between points in the coverage territory.
- b. Loss or damage must be caused by or result from one of the following causes of loss:
  - (1) Fire, lightning, explosion, windstorm or hail, riot or civil commotion, or vandalism.
  - (2) Vehicle collision, upset or overturn. Collision means accidental contact of your vehicle with another vehicle or object. It does not mean your vehicle's contact with the roadbed.
  - (3) Theft of an entire bale, case or package by forced entry into a securely locked body or compartment of the vehicle. There must be visible marks of the forced entry.
- c. The most we will pay for loss or damage under this Extension is \$5,000.

This Coverage Extension is additional insurance. The Additional Condition, Coinsurance, does not apply to this Extension.

### **2. Water Damage, Other Liquids, Powder Or Molten Material Damage**

If loss or damage caused by or resulting from covered water or other liquid, powder or molten material damage loss occurs, we will also pay the cost to tear out and replace any part of the building or structure to repair damage to the system or appliance from which the water or other substance escapes. This Coverage Extension does not increase the Limit of Insurance.

### 3. Glass

- a. We will pay for expenses incurred to put up temporary plates or board up openings if repair or replacement of damaged glass is delayed.
- b. We will pay for expenses incurred to remove or replace obstructions when repairing or replacing glass that is part of a building. This does not include removing or replacing window displays.

This Coverage Extension **F.3.** does not increase the Limit of Insurance.

### G. Definitions

1. "Fungus" means any type or form of fungus, including mold or mildew, and any mycotoxins, spores, scents or by-products produced or released by fungi.
2. "Specified causes of loss" means the following:
  - a. Sinkhole collapse means the sudden sinking or collapse of land into underground empty spaces created by the action of water on limestone or dolomite. This cause of loss does not include:
    - (1) The cost of filling sinkholes; or
    - (2) Sinking or collapse of land into man-made underground cavities.
  - b. Falling objects does not include loss or damage to:
    - (1) Personal property in the open; or
    - (2) The interior of a building or structure, or property inside a building or structure, unless the roof or an outside wall of the building or structure is first damaged by a falling object.
  - c. Water damage means:
    - (1) Accidental discharge or leakage of water or steam as the direct result of the breaking apart or cracking of a plumbing, heating, air conditioning or other system or appliance (other than a sump system including its related equipment and parts), that is located on the described premises and contains water or steam; and

- (2) Accidental discharge or leakage of water or waterborne material as the direct result of the breaking apart or cracking of a water or sewer pipe caused by wear and tear, when the pipe is located off the described premises and is connected to or is part of a potable water supply system or sanitary sewer system operated by a public or private utility service provider pursuant to authority granted by the state or governmental subdivision where the described premises are located.

But water damage does not include loss or damage otherwise excluded under the terms of the Water Exclusion. Therefore, for example, there is no coverage under this policy in the situation in which discharge or leakage of water results from the breaking apart or cracking of a pipe which was caused by or related to weather-induced flooding, even if wear and tear contributed to the breakage or cracking. As another example, and also in accordance with the terms of the Water Exclusion, there is no coverage for loss or damage caused by or related to weather-induced flooding which follows or is exacerbated by pipe breakage or cracking attributable to wear and tear.

To the extent that accidental discharge or leakage of water falls within the criteria set forth in **c.(1)** or **c.(2)** of this definition of "specified causes of loss," such water is not subject to the provisions of the Water Exclusion which preclude coverage for surface water or water under the surface of the ground.

## GARAGE COVERAGE FORM

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations. The words "we", "us" and "our" refer to the company providing this insurance.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section VI – Definitions.

### SECTION I – COVERED AUTOS

Item Two of the Declarations shows the "autos" that are covered "autos" for each of your coverages. The following numerical symbols describe the "autos" that may be covered "autos". The symbols entered next to a coverage on the Declarations designate the only "autos" that are covered "autos".

#### A. Description Of Covered Auto Designation Symbols

Symbol	Description Of Covered Auto Designation Symbols	
21	Any "Auto"	
22	Owned "Autos" Only	Only those "autos" you own (and for Liability Coverage any "trailers" you don't own while attached to power units you own). This includes those "autos" you acquire ownership of after the policy begins.
23	Owned Private Passenger "Autos" Only	Only the private passenger "autos" you own. This includes those private passenger "autos" you acquire ownership of after the policy begins.
24	Owned "Autos" Other Than Private Passenger "Autos" Only	Only those "autos" you own that are not of the private passenger type (and for Liability Coverage any "trailers" you don't own while attached to power units you own). This includes those "autos" not of the private passenger type you acquire ownership of after the policy begins.
25	Owned "Autos" Subject To No-fault	Only those "autos" you own that are required to have no-fault benefits in the state where they are licensed or principally garaged. This includes those "autos" you acquire ownership of after the policy begins provided they are required to have no-fault benefits in the state where they are licensed or principally garaged.
26	Owned "Autos" Subject To A Compulsory Uninsured Motorists Law	Only those "autos" you own that because of the law in the state where they are licensed or principally garaged are required to have and cannot reject Uninsured Motorists Coverage. This includes those "autos" you acquire ownership of after the policy begins provided they are subject to the same state uninsured motorists requirement.
27	Specifically Described "Autos"	Only those "autos" described in Item Nine of the Declarations for which a premium charge is shown (and for Liability Coverage any "trailers" you don't own while attached to a power unit described in Item Nine).
28	Hired "Autos" Only	Only those "autos" you lease, hire, rent or borrow. This does not include any "auto" you lease, hire, rent or borrow from any of your "employees", partners (if you are a partnership), members (if you are a limited liability company) or members of their households.
29	Non-owned "Autos" Used In Your Garage Business	Any "auto" you do not own, lease, hire, rent or borrow used in connection with your garage business described in the Declarations. This includes "autos" owned by your "employees" or partners (if you are a partnership), members (if you are a limited liability company) or members of their households while used in your garage business.

Symbol	Description Of Covered Auto Designation Symbols	
<b>30</b>	"Autos" Left With You For Service, Repair, Storage Or Safekeeping	Any customer's land motor vehicle or trailer or semitrailer while left with you for service, repair, storage or safekeeping. Customers include your "employees", and members of their households, who pay for the services performed.
<b>31</b>	Dealers "Autos" (Physical Damage Coverages)	Any "autos" and the interests in these "autos" described in Item Seven of the Declarations.

## B. Owned Autos You Acquire After The Policy Begins

1. If Symbols **21**, **22**, **23**, **24**, **25** or **26** are entered next to a coverage in Item Two of the Declarations, then you have coverage for "autos" that you acquire of the type described for the remainder of the policy period.
2. But, if Symbol **27** is entered next to a coverage in Item Two of the Declarations, an "auto" you acquire will be a covered "auto" for that coverage only if:
  - a. We already cover all "autos" that you own for that coverage or it replaces an "auto" you previously owned that had that coverage; and
  - b. You tell us within 30 days after you acquire it that you want us to cover it for that coverage.

## C. Certain Trailers And Temporary Substitute Autos

If Liability Coverage is provided by this coverage form, the following types of vehicles are also covered "autos" for Liability Coverage:

1. "Trailers" with a load capacity of 2,000 pounds or less designed primarily for travel on public roads.
2. Any "auto" you do not own while used with the permission of its owner as a temporary substitute for a covered "auto" you own that is out of service because of its:
  - a. Breakdown;
  - b. Repair;
  - c. Servicing;

- d. "Loss"; or
- e. Destruction.

## SECTION II – LIABILITY COVERAGE

### A. Coverage

#### 1. "Garage Operations" – Other Than Covered "Autos"

- a. We will pay all sums an "insured" legally must pay as damages because of "bodily injury" or "property damage" to which this insurance applies caused by an "accident" and resulting from "garage operations" other than the ownership, maintenance or use of covered "autos".

We have the right and duty to defend any "insured" against a "suit" asking for these damages. However, we have no duty to defend any "insured" against a "suit" seeking damages for "bodily injury" or "property damage" to which this insurance does not apply. We may investigate and settle any claim or "suit" as we consider appropriate. Our duty to defend or settle ends when the applicable Liability Coverage Limit of Insurance – "Garage Operations" – Other Than Covered "Autos" has been exhausted by payment of judgments or settlements.

- b. This insurance applies to "bodily injury" and "property damage" only if:
  - (1) The "accident" occurs in the coverage territory;
  - (2) The "bodily injury" or "property damage" occurs during the policy period; and

(3) Prior to the policy period, no "insured" listed under Who Is An Insured and no "employee" authorized by you to give or receive notice of an "accident" or claim knew that the "bodily injury" or "property damage" had occurred, in whole or in part. If such a listed "insured" or authorized "employee" knew, prior to the policy period, that the "bodily injury" or "property damage" occurred, then any continuation, change or resumption of such "bodily injury" or "property damage" during or after the policy period will be deemed to have been known prior to the policy period.

c. "Bodily injury" or "property damage", which occurs during the policy period and was not, prior to the policy period, known to have occurred by any "insured" listed under Who Is An Insured or any "employee" authorized by you to give or receive notice of an "accident" or claim, includes any continuation, change or resumption of that "bodily injury" or "property damage" after the end of the policy period.

d. "Bodily injury" or "property damage" will be deemed to have been known to have occurred at the earliest time when any "insured" listed under Who Is An Insured or any "employee" authorized by you to give or receive notice of an "accident" or claim:

- (1) Reports all, or any part, of the "bodily injury" or "property damage" to us or any other insurer;
- (2) Receives a written or verbal demand or claim for damages because of the "bodily injury" or "property damage"; or
- (3) Becomes aware by any other means that "bodily injury" or "property damage" has occurred or has begun to occur.

## **2. "Garage Operations" – Covered "Autos"**

We will pay all sums an "insured" legally must pay as damages because of "bodily injury" or "property damage" to which this insurance applies, caused by an "accident" and resulting from "garage operations" involving the ownership, maintenance or use of covered "autos".

We will also pay all sums an "insured" legally must pay as a "covered pollution cost or expense" to which this insurance applies, caused by an "accident" and resulting from "garage operations" involving the ownership, maintenance or use of covered "autos". However, we will only pay for the "covered pollution cost or expense" if there is either "bodily injury" or "property damage" to which this insurance applies that is caused by the same "accident".

We have the right and duty to defend any "insured" against a "suit" asking for such damages or a "covered pollution cost or expense". However, we have no duty to defend any "insured" against a "suit" seeking damages for "bodily injury" or "property damage" or a "covered pollution cost or expense" to which this insurance does not apply. We may investigate and settle any claim or "suit" as we consider appropriate. Our duty to defend or settle ends when the Liability Coverage Limit of Insurance – "Garage Operations" – Covered "Autos" has been exhausted by payment of judgments or settlements.

## **3. Who Is An Insured**

a. The following are "insureds" for covered "autos":

- (1) You for any covered "auto".
- (2) Anyone else while using with your permission a covered "auto" you own, hire or borrow except:
  - (a) The owner or anyone else from whom you hire or borrow a covered "auto". This exception does not apply if the covered "auto" is a "trailer" connected to a covered "auto" you own.
  - (b) Your "employee" if the covered "auto" is owned by that "employee" or a member of his or her household.
  - (c) Someone using a covered "auto" while he or she is working in a business of selling, servicing or repairing "autos" unless that business is your "garage operations".

(d) Your customers. However, if a customer of yours:

(i) Has no other available insurance (whether primary, excess or contingent), they are an "insured" but only up to the compulsory or financial responsibility law limits where the covered "auto" is principally garaged.

(ii) Has other available insurance (whether primary, excess or contingent) less than the compulsory or financial responsibility law limits where the covered "auto" is principally garaged, they are an "insured" only for the amount by which the compulsory or financial responsibility law limits exceed the limit of their other insurance.

(e) A partner (if you are a partnership) or a member (if you are a limited liability company) for a covered "auto" owned by him or her or a member of his or her household.

(3) Anyone liable for the conduct of an "insured" described above but only to the extent of that liability.

(4) Your "employee" while using a covered "auto" you do not own, hire or borrow in your business or your personal affairs.

b. The following are "insureds" for "garage operations" other than covered "autos":

(1) You.

(2) Your partners (if you are a partnership), members (if you are a limited liability company), "employees", directors or shareholders but only while acting within the scope of their duties.

#### 4. Coverage Extensions

##### a. Supplementary Payments

We will pay for the "insured":

(1) All expenses we incur.

(2) Up to \$2,000 for the cost of bail bonds (including bonds for related traffic law violations) required because of an "accident" we cover. We do not have to furnish these bonds.

(3) The cost of bonds to release attachments in any "suit" against the "insured" we defend, but only for bond amounts within our Limit of Insurance.

(4) All reasonable expenses incurred by the "insured" at our request, including actual loss of earnings up to \$250 a day because of time off from work.

(5) All court costs taxed against the "insured" in any "suit" against the "insured" we defend. However, these payments do not include attorneys' fees or attorneys' expenses taxed against the "insured".

(6) All interest on the full amount of any judgment that accrues after entry of the judgment in any "suit" against the "insured" we defend; but our duty to pay interest ends when we have paid, offered to pay or deposited in court the part of the judgment that is within our Limit of Insurance.

These payments will not reduce the Limit of Insurance.

##### b. Out-of-state Coverage Extensions

While a covered "auto" is away from the state where it is licensed we will:

(1) Increase the Limit of Insurance for Liability Coverage to meet the limits specified by a compulsory or financial responsibility law of the jurisdiction where the covered "auto" is being used. This extension does not apply to the limit or limits specified by any law governing motor carriers of passengers or property.

(2) Provide the minimum amounts and types of other coverages, such as no-fault, required of out-of-state vehicles by the jurisdiction where the covered "auto" is being used.

We will not pay anyone more than once for the same elements of loss because of these extensions.

#### B. Exclusions

This insurance does not apply to any of the following:

##### 1. Expected Or Intended Injury

"Bodily injury" or "property damage" expected or intended from the standpoint of the "insured". But for "garage operations" other than covered "autos" this exclusion does not apply to "bodily injury" resulting from the use of reasonable force to protect persons or property.



## 2. Contractual

Liability assumed under any contract or agreement. But this exclusion does not apply to liability for damages:

- a. Assumed in a contract or agreement that is an "insured contract" provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement; or
- b. That the "insured" would have in the absence of the contract or agreement.

## 3. Workers' Compensation

Any obligation for which the "insured" or the "insured's" insurer may be held liable under any workers' compensation, disability benefits or unemployment compensation law or any similar law.

## 4. Employee Indemnification And Employer's Liability

"Bodily injury" to:

- a. An "employee" of the "insured" arising out of and in the course of:
  - (1) Employment by the "insured"; or
  - (2) Performing the duties related to the conduct of the "insured's" business;
- b. The spouse, child, parent, brother or sister of that "employee" as a consequence of Paragraph a. above;
- c. A person arising out of any:
  - (1) Refusal to employ that person;
  - (2) Termination of that person's employment; or
  - (3) Employment-related practices, policies, acts or omissions, such as coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination or malicious prosecution directed at that person; or
- d. The spouse, child, parent, brother or sister of that person as a consequence of "bodily injury" to that person at whom any of the employment-related practices described in Paragraph c.(1), (2) or (3) above are directed.

This exclusion applies:

- (1) Whether the injury-causing event described in Paragraph c.(1), (2) or (3) above occurs before employment, during employment or after employment of that person;

- (2) Whether the "insured" may be liable as an employer or in any other capacity; and

- (3) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

But this exclusion does not apply to "bodily injury" to domestic "employees" not entitled to workers' compensation benefits or to liability assumed by the "insured" under an "insured contract". For the purposes of the coverage form, a domestic "employee" is a person engaged in household or domestic work performed principally in connection with a residence premises.

## 5. Fellow Employee

"Bodily injury" to:

- a. Any fellow "employee" of the "insured" arising out of and in the course of the fellow "employee's" employment or while performing duties related to the conduct of your business; or
- b. The spouse, child, parent, brother or sister of that fellow "employee" as a consequence of Paragraph a. above.

## 6. Care, Custody Or Control

"Property damage" to or "covered pollution cost or expense" involving:

- a. Property owned, rented or occupied by the "insured";
- b. Property loaned to the "insured";
- c. Property held for sale or being transported by the "insured"; or
- d. Property in the "insured's" care, custody or control.

But this exclusion does not apply to liability assumed under a sidetrack agreement.

## 7. Leased Autos

Any covered "auto" while leased or rented to others. But this exclusion does not apply to a covered "auto" you rent to one of your customers while their "auto" is left with you for service or repair.

## **8. Pollution Exclusion Applicable To "Garage Operations" – Other Than Covered "Autos"**

a. "Bodily injury" or "property damage" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":

- (1) At or from any premises, site or location that is or was at any time owned or occupied by, or rented or loaned to, any "insured";
- (2) At or from any premises, site or location that is or was at any time used by or for any "insured" or others for the handling, storage, disposal, processing or treatment of waste;
- (3) At or from any premises, site or location on which any "insured" or any contractors or subcontractors working directly or indirectly on any "insured's" behalf are performing operations:
  - (a) To test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, the "pollutants"; or
  - (b) If the "pollutants" are brought on or to the premises, site or location in connection with such operations by such "insured", contractor or subcontractor; or
- (4) That are or were at any time transported, handled, stored, treated, disposed of or processed as waste by or for any "insured" or any person or organization for whom you may be legally responsible.

Paragraphs **a.(1)** and **a.(3)(b)** do not apply to "bodily injury" or "property damage" arising out of heat, smoke or fumes from a hostile fire. A hostile fire means one that becomes uncontrollable or breaks out from where it was intended to be.

Paragraph **a.(1)** does not apply to "bodily injury" if sustained within a building and caused by smoke, fumes, vapor or soot produced by or originating from equipment that is used to heat, cool or dehumidify the building, or equipment that is used to heat water for personal use, by the building's occupants or their guests.

Paragraph **a.(3)(b)** does not apply to "bodily injury" or "property damage" sustained within a building and caused by the release of gases, fumes or vapors from material brought into that building in connection with operations being performed by you or on your behalf by a contractor or subcontractor.

b. Any loss, cost or expense arising out of any:

- (1) Request, demand, order or statutory or regulatory requirement that any "insured" or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
- (2) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

However, this paragraph does not apply to liability for damages because of "property damage" that the "insured" would have in the absence of such request, demand, order or statutory or regulatory requirement, or such claim or "suit" by or on behalf of a governmental authority.

## **9. Pollution Exclusion Applicable To "Garage Operations" – Covered "Autos"**

"Bodily injury" or "property damage" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":

a. That are, or that are contained in any property that is:

- (1) Being transported or towed by, handled or handled for movement into, onto or from, the covered "auto";
- (2) Otherwise in the course of transit by or on behalf of the "insured"; or
- (3) Being stored, disposed of, treated or processed in or upon the covered "auto";

b. Before the "pollutants" or any property in which the "pollutants" are contained are moved from the place where they are accepted by the "insured" for movement into or onto the covered "auto"; or

- c. After the "pollutants" or any property in which the "pollutants" are contained are moved from the covered "auto" to the place where they are finally delivered, disposed of or abandoned by the "insured".

Paragraph **a.** above does not apply to fuels, lubricants, fluids, exhaust gases or other similar "pollutants" that are needed for or result from the normal electrical, hydraulic or mechanical functioning of the covered "auto" or its parts, if the "pollutants" escape, seep, migrate or are discharged, dispersed or released directly from an "auto" part designed by its manufacturer to hold, store, receive or dispose of such "pollutants".

Paragraphs **b.** and **c.** above of this exclusion do not apply to "accidents" that occur away from premises owned by or rented to an "insured" with respect to "pollutants" not in or upon a covered "auto" if:

- (1) The "pollutants" or any property in which the "pollutants" are contained are upset, overturned or damaged as a result of the maintenance or use of a covered "auto"; and
- (2) The discharge, dispersal, seepage, migration, release or escape of the "pollutants" is caused directly by such upset, overturn or damage.

#### **10. Racing**

Covered "autos" while used in any professional or organized racing or demolition contest or stunting activity, or while practicing for such contest or activity. This insurance also does not apply while that covered "auto" is being prepared for such a contest or activity.

#### **11. Watercraft Or Aircraft**

Any watercraft or aircraft except watercraft while ashore on premises where you conduct "garage operations".

#### **12. Defective Products**

"Property damage" to any of your "products", if caused by a defect existing in your "products" or any part of your "products", at the time it was transferred to another.

#### **13. Work You Performed**

"Property damage" to "work you performed" if the "property damage" results from any part of the work itself or from the parts, materials or equipment used in connection with the work.

#### **14. Loss Of Use**

Loss of use of other property not physically damaged if caused by:

- a. A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.
- b. A defect, deficiency, inadequacy or dangerous condition in your "products" or "work you performed". But this exclusion, **14.b.**, does not apply if the loss of use was caused by sudden and accidental damage to or destruction of your "products" or "work you performed" after they have been put to their intended use.

#### **15. Products Recall**

Damages claimed for any loss, cost or expense incurred by you or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of your "products" or "work you performed" or other property of which they form a part, if such product, work or property is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it.

#### **16. War**

"Bodily injury" or "property damage" arising directly or indirectly out of:

- a. War, including undeclared or civil war;
- b. Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- c. Insurrection, rebellion, revolution, usurped power or action taken by governmental authority in hindering or defending against any of these.

#### **17. Distribution Of Material In Violation Of Statutes Exclusion Applicable To "Garage Operations" – Other Than Covered "Autos"**

"Bodily injury" or "property damage" arising directly or indirectly out of any action or omission that violates or is alleged to violate:

- a. The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law;
- b. The CAN-SPAM Act of 2003, including any amendment of or addition to such law; or

- c. Any statute, ordinance or regulation, other than the TCPA or CAN-SPAM Act of 2003, that prohibits or limits the sending, transmitting, communicating or distribution of material or information.

## **C. Limit Of Insurance**

### **1. Aggregate Limit Of Insurance – "Garage Operations" – Other Than Covered "Autos"**

For "garage operations" other than the ownership, maintenance or use of covered "autos", the following applies:

Regardless of the number of "insureds", claims made or "suits" brought or persons or organizations making claims or bringing "suits", the most we will pay for the sum of all damages involving "garage operations" other than "auto" is the Aggregate Limit of Insurance – "Garage Operations" – Other Than Covered "Autos" for Liability Coverage shown in the Declarations.

Damages payable under the Aggregate Limit of Insurance – "Garage Operations" – Other Than Covered "Autos" consist of damages resulting from "garage operations", other than the ownership, maintenance or use of the "autos" indicated in Section I of this coverage form as covered "autos", including the following coverages, if provided by endorsement:

- a. "Personal injury" liability coverage;
- b. "Personal and advertising injury" liability coverage;
- c. Host liquor liability coverage;
- d. Damage to rented premises liability coverage;
- e. Incidental medical malpractice liability coverage;
- f. Non-owned watercraft coverage; and
- g. Broad form products coverage.

Damages payable under the Each "Accident" Limit of Insurance – "Garage Operations" – Other Than Covered "Autos" are not payable under the Each "Accident" Limit of Insurance – "Garage Operations" – Covered "Autos".

Subject to the above, the most we will pay for all damages resulting from all "bodily injury" and "property damage" resulting from any one "accident" is the Each "Accident" Limit of Insurance – "Garage Operations" – Other Than Covered "Autos" for Liability Coverage shown in the Declarations.

All "bodily injury" and "property damage" resulting from continuous or repeated exposure to substantially the same conditions will be considered as resulting from one "accident".

The Aggregate Limit of Insurance – "Garage Operations" Other Than Covered "Autos" applies separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Aggregate Limit of Insurance – "Garage Operations" – Other Than Covered "Autos".

### **2. Limit Of Insurance – "Garage Operations" – Covered "Autos"**

For "accidents" resulting from "garage operations" involving the ownership, maintenance or use of covered "autos", the following applies:

Regardless of the number of covered "autos", "insureds", premiums paid, claims made or vehicles involved in the "accident", the most we will pay for the total of all damages and "covered pollution cost or expense" combined, resulting from any one "accident" involving a covered "auto" is the Each "Accident" Limit of Insurance – "Garage Operations" – Covered "Autos" for Liability Coverage shown in the Declarations.

Damages and "covered pollution cost or expense" payable under the Each "Accident" Limit of Insurance – "Garage Operations" – Covered "Autos" are not payable under the Each "Accident" Limit of Insurance – "Garage Operations" – Other Than Covered "Autos".

All "bodily injury", "property damage" and "covered pollution cost or expense" resulting from continuous or repeated exposure to substantially the same conditions will be considered as resulting from one "accident".

No one will be entitled to receive duplicate payments for the same elements of "loss" under this coverage form and any Medical Payments Coverage endorsement, Uninsured Motorists Coverage endorsement or Underinsured Motorists Coverage endorsement attached to this Coverage Part.

## **D. Deductible**

We will deduct \$100 from the damages in any "accident" resulting from "property damage" to an "auto" as a result of "work you performed" on that "auto".

## SECTION III – GARAGEKEEPERS COVERAGE

### A. Coverage

1. We will pay all sums the "insured" legally must pay as damages for "loss" to a "customer's auto" or "customer's auto" equipment left in the "insured's" care while the "insured" is attending, servicing, repairing, parking or storing it in your "garage operations" under:

#### a. Comprehensive Coverage

From any cause except:

- (1) The "customer's auto's" collision with another object; or
- (2) The "customer's auto's" overturn.

#### b. Specified Causes Of Loss Coverage

Caused by:

- (1) Fire, lightning or explosion;
- (2) Theft; or
- (3) Mischief or vandalism.

#### c. Collision Coverage

Caused by:

- (1) The "customer's auto's" collision with another object; or
- (2) The "customer's auto's" overturn.

2. We have the right and duty to defend any "insured" against a "suit" asking for these damages. However, we have no duty to defend any "insured" against a "suit" seeking damages for any loss to which this insurance does not apply. We may investigate and settle any claim or "suit" as we consider appropriate. Our duty to defend or settle ends for a coverage when the Limit of Insurance for that coverage has been exhausted by payment of judgments or settlements.

### 3. Who Is An Insured

The following are "insureds" for "loss" to "customer's autos" and "customer's auto" equipment:

- a. You.
- b. Your partners (if you are a partnership), members (if you are a limited liability company), "employees", directors or shareholders while acting within the scope of their duties as such.

### 4. Coverage Extensions

The following apply as **Supplementary Payments**. We will pay for the "insured":

- a. All expenses we incur.

- b. The cost of bonds to release attachments in any "suit" against the "insured" we defend, but only for bond amounts within our Limit of Insurance.
- c. All reasonable expenses incurred by the "insured" at our request, including actual loss of earnings up to \$250 a day because of time off from work.
- d. All court costs taxed against the "insured" in any "suit" against the "insured" we defend. However, these payments do not include attorneys' fees or attorneys' expenses taxed against the "insured".
- e. All interest on the full amount of any judgment that accrues after entry of the judgment in any "suit" against the "insured" we defend; but our duty to pay interest ends when we have paid, offered to pay or deposited in court the part of the judgment that is within our Limit of Insurance.

These payments will not reduce the Limit of Insurance.

### B. Exclusions

1. This insurance does not apply to any of the following:

#### a. Contractual Obligations

Liability resulting from any contract or agreement by which the "insured" accepts responsibility for "loss". But this exclusion does not apply to liability for "loss" that the "insured" would have in the absence of the contract or agreement.

#### b. Theft

"Loss" due to theft or conversion caused in any way by you, your "employees" or by your shareholders.

#### c. Defective Parts

Defective parts or materials.

#### d. Faulty Work

Faulty "work you performed".

2. We will not pay for "loss" to any of the following:

- a. Tape decks or other sound-reproducing equipment unless permanently installed in a "customer's auto".
- b. Tapes, records or other sound-reproducing devices designed for use with sound-reproducing equipment.

- c. Sound-receiving equipment designed for use as a citizens' band radio, two-way mobile radio or telephone or scanning monitor receiver, including its antennas and other accessories, unless permanently installed in the dash or console opening normally used by the "customer's auto" manufacturer for the installation of a radio.
- d. Any device designed or used to detect speed-measuring equipment such as radar or laser detectors and any jamming apparatus intended to elude or disrupt speed-measuring equipment.

3. We will not pay for "loss" caused by or resulting from the following. Such "loss" is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the "loss":

- a. War, including undeclared or civil war;
- b. Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- c. Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

#### **C. Limits Of Insurance And Deductibles**

1. Regardless of the number of "customer's autos", "insureds", premiums paid, claims made or "suits" brought, the most we will pay for each "loss" at each location is the Garagekeepers Coverage Limit of Insurance shown in the Declarations for that location. Prior to the application of this limit, the damages for "loss" that would otherwise be payable will be reduced by the applicable deductibles for "loss" caused by:

- a. Collision; or
- b. With respect to Garagekeepers Coverage Comprehensive or Specified Causes Of Loss Coverage:
  - (1) Theft or mischief or vandalism; or
  - (2) All perils.

2. The maximum deductible stated in the Declarations for Garagekeepers Coverage Comprehensive or Specified Causes Of Loss Coverage is the most that will be deducted for all "loss" in any one event caused by:

- a. Theft or mischief or vandalism; or
- b. All perils.

3. Sometimes to settle a claim or "suit", we may pay all or any part of the deductible. If this happens you must reimburse us for the deductible or that portion of the deductible that we paid.

### **SECTION IV – PHYSICAL DAMAGE COVERAGE**

#### **A. Coverage**

1. We will pay for "loss" to a covered "auto" or its equipment under:

##### **a. Comprehensive Coverage**

From any cause except:

- (1) The covered "auto's" collision with another object; or
- (2) The covered "auto's" overturn.

##### **b. Specified Causes Of Loss Coverage**

Caused by:

- (1) Fire, lightning or explosion;
- (2) Theft;
- (3) Windstorm, hail or earthquake;
- (4) Flood;
- (5) Mischief or vandalism; or
- (6) The sinking, burning, collision or derailment of any conveyance transporting the covered "auto".

##### **c. Collision Coverage**

Caused by:

- (1) The covered "auto's" collision with another object; or
- (2) The covered "auto's" overturn.

#### **2. Glass Breakage – Hitting A Bird Or Animal – Falling Objects Or Missiles**

If you carry Comprehensive Coverage for the damaged covered "auto", we will pay for the following under Comprehensive Coverage:

- a. Glass breakage;
- b. "Loss" caused by hitting a bird or animal; and
- c. "Loss" caused by falling objects or missiles.

However, you have the option of having glass breakage caused by a covered "auto's" collision or overturn considered a "loss" under Collision Coverage.

### 3. Coverage Extension – Loss Of Use Expenses

For Hired Auto Physical Damage, we will pay expenses for which an "insured" becomes legally responsible to pay for loss of use of a vehicle rented or hired without a driver, under a written rental contract or agreement. We will pay for loss of use expenses if caused by:

- a. Other than collision only if the Declarations indicate that Comprehensive Coverage is provided for any covered "auto";
- b. Specified Causes Of Loss only if the Declarations indicate that Specified Causes Of Loss Coverage is provided for any covered "auto"; or
- c. Collision only if the Declarations indicate that Collision Coverage is provided for any covered "auto".

However, the most we will pay for any expenses for loss of use is \$20 per day, to a maximum of \$600.

### B. Exclusions

- 1. We will not pay for "loss" caused by or resulting from any of the following. Such "loss" is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the "loss".

#### a. Nuclear Hazard

- (1) The explosion of any weapon employing atomic fission or fusion; or
- (2) Nuclear reaction or radiation, or radioactive contamination, however caused.

#### b. War Or Military Action

- (1) War, including undeclared or civil war;
- (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- (3) Insurrection, rebellion, revolution, usurped power or action taken by governmental authority in hindering or defending against any of these.

- 2. We will not pay for "loss" to any of the following:

- a. Any covered "auto" leased or rented to others unless rented to one of your customers while their "auto" is left with you for service or repair.

- b. Any covered "auto" while used in any professional or organized racing or demolition contest or stunting activity, or while practicing for such contest or activity. We will also not pay for "loss" to any covered "auto" while that covered "auto" is being prepared for such contest or activity.

- c. Tapes, records, discs or other similar audio, visual or data electronic devices designed for use with audio, visual or data electronic equipment.

- d. Any device designed or used to detect speed measuring equipment such as radar or laser detectors and any jamming apparatus intended to elude or disrupt speed-measurement equipment.

- e. Any electronic equipment, without regard to whether this equipment is permanently installed, that reproduces, receives or transmits audio, visual or data signals.

- f. Any accessories used with the electronic equipment described in Paragraph e. above.

- 3. Exclusions 2.e. and 2.f. do not apply to equipment designed to be operated solely by use of the power from the "auto's" electrical system that, at the time of "loss", is:

- a. Permanently installed in or upon the covered "auto";
- b. Removable from a housing unit which is permanently installed in or upon the covered "auto";
- c. An integral part of the same unit housing any electronic equipment described in Paragraphs a. and b. above; or
- d. Necessary for the normal operation of the covered "auto" or the monitoring of the covered "auto's" operating system.

#### 4. False Pretense

We will not pay for "loss" to a covered "auto" caused by or resulting from:

- a. Someone causing you to voluntarily part with it by trick or scheme or under false pretenses; or
- b. Your acquiring an "auto" from a seller who did not have legal title.

- 5. We will not pay for:

- a. Your expected profit, including loss of market value or resale value.

- b. "Loss" to any covered "auto" displayed or stored at any location not shown in Item Three of the Declarations if the "loss" occurs more than 45 days after your use of the location begins.
- c. Under the Collision Coverage, "loss" to any covered "auto" while being driven or transported from the point of purchase or distribution to its destination if such points are more than 50 road miles apart.
- d. Under the Specified Causes Of Loss Coverage, "loss" to any covered "auto" caused by or resulting from the collision or upset of any vehicle transporting it.

6. We will not pay for "loss" to a covered "auto" due to "diminution in value".

#### 7. Other Exclusions

We will not pay for "loss" due and confined to:

- a. Wear and tear, freezing, mechanical or electrical breakdown.
- b. Blowouts, punctures or other road damage to tires.

This exclusion does not apply to such "loss" resulting from the total theft of a covered "auto".

#### C. Limits Of Insurance

1. The most we will pay for "loss" to any one covered "auto" is the lesser of:
  - a. The actual cash value of the damaged or stolen property as of the time of "loss"; or
  - b. The cost of repairing or replacing the damaged or stolen property with other property of like kind and quality.
2. \$1,000 is the most we will pay for "loss" in any one "accident" to all electronic equipment that reproduces, receives or transmits audio, visual or data signals which, at the time of "loss", is:
  - a. Permanently installed in or upon the covered "auto" in a housing, opening or other location that is not normally used by the "auto" manufacturer for the installation of such equipment;
  - b. Removable from a permanently installed housing unit as described in Paragraph 2.a. above; or
  - c. An integral part of such equipment.
3. An adjustment for depreciation and physical condition will be made in determining actual cash value in the event of a total "loss".
4. If a repair or replacement results in better than like kind or quality, we will not pay for the amount of the betterment.

5. The following provisions also apply:

- a. Regardless of the number of covered "autos" involved in the "loss", the most we will pay for all "loss" at any one location is the amount shown in the Declarations for that location. Regardless of the number of covered "autos" involved in the "loss", the most we will pay for all "loss" in transit is the amount shown in the Declarations for "loss" in transit.

#### b. Quarterly Or Monthly Reporting Premium Basis

If, on the date of your last report, the actual value of the covered "autos" at the "loss" location exceeds what you last reported, when a "loss" occurs we will pay only a percentage of what we would otherwise be obligated to pay. We will determine this percentage by dividing your total reported value for the involved location by the total actual value at the "loss" location on the date of your last report.

If the first report due is delinquent on the date of "loss", the most we will pay will not exceed 75 percent of the Limit of Insurance shown in the Declarations for the applicable location.

#### c. Non-reporting Premium Basis

If, when "loss" occurs, the total value of your covered "autos" exceeds the Limit of Insurance shown in the Declarations, we will pay only a percentage of what we would otherwise be obligated to pay. We will determine this percentage by dividing the Limit of Insurance by the total actual value at the "loss" location at the time the "loss" occurred.

#### D. Deductible

For each covered "auto", our obligation to pay for, repair, return or replace damaged or stolen property will be reduced by the applicable deductible shown in the Declarations prior to the application of the Limit of Insurance shown in the Declarations, provided that:

1. The Comprehensive or Specified Causes Of Loss Coverage deductible applies only to "loss" caused by:
  - a. Theft or mischief or vandalism; or
  - b. All perils.



2. Regardless of the number of covered "autos" damaged or stolen, the per "loss" deductible for Comprehensive or Specified Causes Of Loss Coverage shown in the Declarations is the maximum deductible applicable for all "loss" in any one event caused by:

- a. Theft or mischief or vandalism; or
- b. All perils.

## **SECTION V – GARAGE CONDITIONS**

The following conditions apply in addition to the Common Policy Conditions:

### **A. Loss Conditions**

#### **1. Appraisal For Physical Damage Loss**

If you and we disagree on the amount of "loss", either may demand an appraisal of the "loss". In this event, each party will select a competent appraiser. The two appraisers will select a competent and impartial umpire.

The appraisers will state separately the actual cash value and amount of "loss". If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding. Each party will:

- a. Pay its chosen appraiser; and
- b. Bear the other expenses of the appraisal and umpire equally.

If we submit to an appraisal, we will still retain our right to deny the claim.

#### **2. Duties In The Event Of Accident, Claim, Suit Or Loss**

We have no duty to provide coverage under this policy unless there has been full compliance with the following duties:

- a. In the event of "accident", claim, "suit" or "loss", you must give us or our authorized representative prompt notice of the accident or "loss". Include:
  - (1) How, when and where the "accident" or "loss" occurred;
  - (2) The "insured's" name and address; and
  - (3) To the extent possible, the names and addresses of any injured persons and witnesses.
- b. Additionally, you and any other involved "insured" must:
  - (1) Assume no obligation, make no payment or incur no expense without our consent, except at the "insured's" own cost.

- (2) Immediately send us copies of any request, demand, order, notice, summons or legal paper received concerning the claim or "suit".

- (3) Cooperate with us in the investigation or settlement of the claim or defense against the "suit".

- (4) Authorize us to obtain medical records or other pertinent information.

- (5) Submit to examination at our expense, by physicians of our choice, as often as we reasonably require.

- c. If there is "loss" to a covered "auto" or its equipment you must also do the following:

- (1) Promptly notify the police if the covered "auto" or any of its equipment is stolen.

- (2) Take all reasonable steps to protect the covered "auto" from further damage. Also keep a record of your expenses for consideration in the settlement of the claim.

- (3) Permit us to inspect the covered "auto" and records proving the "loss" before its repair or disposition.

- (4) Agree to examinations under oath at our request and give us a signed statement of your answers.

#### **3. Legal Action Against Us**

No one may bring a legal action against us under this coverage form until:

- a. There has been full compliance with all the terms of this coverage form; and
- b. Under Liability Coverage, we agree in writing that the "insured" has an obligation to pay or until the amount of that obligation has finally been determined by judgment after trial. No one has the right under this policy to bring us into an action to determine the "insured's" liability.

#### **4. Loss Payment – Physical Damage Coverages**

At our option we may:

- a. Pay for, repair or replace damaged or stolen property;
- b. Return the stolen property, at our expense. We will pay for any damage that results to the "auto" from the theft; or
- c. Take all or any part of the damaged or stolen property at an agreed or appraised value.

If we pay for the "loss", our payment will include the applicable sales tax for the damaged or stolen property.

#### **5. Transfer Of Rights Of Recovery Against Others To Us**

If any person or organization to or for whom we make payment under this coverage form has rights to recover damages from another, those rights are transferred to us. That person or organization must do everything necessary to secure our rights and must do nothing after "accident" or "loss" to impair them.

### **B. General Conditions**

#### **1. Bankruptcy**

Bankruptcy or insolvency of the "insured" or the "insured's" estate will not relieve us of any obligations under this coverage form.

#### **2. Concealment, Misrepresentation Or Fraud**

This coverage form is void in any case of fraud by you at any time as it relates to this coverage form. It is also void if you or any other "insured", at any time, intentionally conceals or misrepresents a material fact concerning:

- a. This coverage form;
- b. The covered "auto";
- c. Your interest in the covered "auto"; or
- d. A claim under this coverage form.

#### **3. Liberalization**

If we revise this coverage form to provide more coverage without additional premium charge, your policy will automatically provide the additional coverage as of the day the revision is effective in your state.

#### **4. No Benefit To Bailee – Physical Damage Coverages**

We will not recognize any assignment or grant any coverage for the benefit of any person or organization holding, storing or transporting property for a fee regardless of any other provision of this coverage form.

#### **5. Other Insurance**

a. For any covered "auto" you own, this coverage form provides primary insurance. For any covered "auto" you don't own, the insurance provided by this coverage form is excess over any other collectible insurance. However, while a covered "auto" which is a "trailer" is connected to another vehicle, the Liability Coverage this coverage form provides for the "trailer" is:

- (1) Excess while it is connected to a motor vehicle you do not own.

(2) Primary while it is connected to a covered "auto" you own.

- b. For Hired Auto Physical Damage Coverage, any covered "auto" you lease, hire, rent or borrow is deemed to be a covered "auto" you own. However, any "auto" that is leased, hired, rented or borrowed with a driver is not a covered "auto".
- c. Regardless of the provisions of Paragraph a. above, this coverage form's Liability Coverage is primary for any liability assumed under an "insured contract".
- d. When this coverage form and any other coverage form or policy covers on the same basis, either excess or primary, we will pay only our share. Our share is the proportion that the Limit of Insurance of our coverage form bears to the total of the limits of all the coverage forms and policies covering on the same basis.

#### **6. Premium Audit**

- a. The estimated premium for this coverage form is based on the exposures you told us you would have when this policy began. We will compute the final premium due when we determine your actual exposures. The estimated total premium will be credited against the final premium due and the first Named Insured will be billed for the balance, if any. The due date for the final premium or retrospective premium is the date shown as the due date on the bill. If the estimated total premium exceeds the final premium due, the first Named Insured will get a refund.
- b. If this policy is issued for more than one year, the premium for this coverage form will be computed annually based on our rates or premiums in effect at the beginning of each year of the policy.

#### **7. Policy Period, Coverage Territory**

Under this coverage form, we cover:

- a. "Bodily injury", "property damage" and "losses" occurring; and
- b. "Covered pollution cost or expense" arising out of "accidents" occurring;

during the policy period shown in the Declarations and within the coverage territory.

The coverage territory is:

- (1) The United States of America;
- (2) The territories and possessions of the United States of America;
- (3) Puerto Rico;

- (4) Canada; and
- (5) Anywhere in the world if:
  - (a) A covered "auto" of the private passenger type is leased, hired, rented or borrowed without a driver for a period of 30 days or less; and
  - (b) The "insured's" responsibility to pay damages is determined in a "suit" on the merits, in the United States of America, the territories and possessions of the United States of America, Puerto Rico or Canada or in a settlement we agree to.

We also cover "bodily injury", "property damage", "covered pollution cost or expense" and "losses" while a covered "auto" is being transported between any of these places.

The coverage territory is extended to anywhere in the world if the "bodily injury" or "property damage" is caused by one of your "products" which is sold for use in the United States of America, its territories or possessions, Puerto Rico or Canada. The original "suit" for damages resulting from such "bodily injury" or "property damage" must be brought in one of these places.

## 8. Two Or More Coverage Forms Or Policies Issued By Us

If this coverage form and any other coverage form or policy issued to you by us or any company affiliated with us applies to the same "accident", the aggregate maximum Limit of Insurance under all the coverage forms or policies shall not exceed the highest applicable Limit of Insurance under any one coverage form or policy. This condition does not apply to any coverage form or policy issued by us or an affiliated company specifically to apply as excess insurance over this coverage form.

## SECTION VI – DEFINITIONS

- A. "Accident" includes continuous or repeated exposure to the same conditions resulting in "bodily injury" or "property damage".
- B. "Auto" means a land motor vehicle, "trailer" or semitrailer.
- C. "Bodily injury" means bodily injury, sickness or disease sustained by a person including death resulting from any of these.

- D. "Covered pollution cost or expense" means any cost or expense arising out of:

1. Any request, demand, order or statutory or regulatory requirement that the "insured" or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
2. Any claim or "suit" by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

"Covered pollution cost or expense" does not include any cost or expense arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":

- a. That are, or that are contained in any property that is:
  - (1) Being transported or towed by, handled, or handled for movement into, onto or from the covered "auto";
  - (2) Otherwise in the course of transit by or on behalf of the "insured"; or
  - (3) Being stored, disposed of, treated or processed in or upon the covered "auto";
- b. Before the "pollutants" or any property in which the "pollutants" are contained are moved from the place where they are accepted by the "insured" for movement into or onto the covered "auto"; or
- c. After the "pollutants" or any property in which the "pollutants" are contained are moved from the covered "auto" to the place where they are finally delivered, disposed of or abandoned by the "insured".

Paragraph a. above does not apply to fuels, lubricants, fluids, exhaust gases or other similar "pollutants" that are needed for or result from the normal electrical, hydraulic or mechanical functioning of the covered "auto" or its parts, if the "pollutants" escape, seep, migrate or are discharged, dispersed or released directly from an "auto" part designed by its manufacturer to hold, store, receive or dispose of such "pollutants".

Paragraphs **b.** and **c.** above do not apply to "accidents" that occur away from premises owned by or rented to an "insured" with respect to "pollutants" not in or upon a covered "auto" if:

- (1) The "pollutants" or any property in which the "pollutants" are contained are upset, overturned or damaged as a result of the maintenance or use of a covered "auto"; and
  - (2) The discharge, dispersal, seepage, migration, release or escape of the "pollutants" is caused directly by such upset, overturn or damage.
- E.** "Customer's auto" means a land motor vehicle, "trailer" or semitrailer lawfully within your possession for service, repair, storage or safekeeping, with or without the vehicle owner's knowledge or consent. A "customer's auto" also includes any such vehicle left in your care by your "employees" and members of their households, who pay for services performed.
- F.** "Diminution in value" means the actual or perceived loss in market value or resale value which results from a direct and accidental "loss".
- G.** "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".
- H.** "Garage operations" means the ownership, maintenance or use of locations for garage business and that portion of the roads or other accesses that adjoin these locations. "Garage operations" includes the ownership, maintenance or use of the "autos" indicated in Section **I** of this coverage form as covered "autos". "Garage operations" also include all operations necessary or incidental to a garage business.
- I.** "Insured" means any person or organization qualifying as an insured in the Who Is an Insured provision of the applicable coverage. Except with respect to the Limit of Insurance, the coverage afforded applies separately to each insured who is seeking coverage or against whom a claim or "suit" is brought.
- J.** "Insured contract" means:
1. A lease of premises;
  2. A sidetrack agreement;
  3. Any easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;
  4. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;

**5.** That part of any other contract or agreement pertaining to your garage business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another to pay for "bodily injury" or "property damage" to a third party or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement;

**6.** An elevator maintenance agreement; or

**7.** That part of any contract or agreement entered into, as part of your garage business, pertaining to the rental or lease, by you or any of your "employees", of any "auto". However, such contract or agreement shall not be considered an "insured contract" to the extent that it obligates you or any of your "employees" to pay "property damage" to any "auto" rented or leased by you or any of your "employees".

An "insured contract" does not include that part of any contract or agreement:

**a.** That indemnifies an architect, engineer or surveyor for injury or damage arising out of:

- (1) Preparing, approving or failing to prepare or approve maps, drawings, opinions, reports, surveys, change orders, designs or specifications; or
- (2) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.

**b.** That indemnifies any person or organization for damage by fire to premises rented or loaned to you or temporarily occupied by you with permission of the owner.

**c.** That pertains to the loan, lease or rental of an "auto", to you or any of your "employees" if the "auto" is loaned, leased or rented with a driver.

**d.** That holds a person or organization engaged in the business of transporting property by "auto" for hire harmless for your use of a covered "auto" over a route or territory that person or organization is authorized to serve by public authority.

**e.** That indemnifies a railroad for "bodily injury" or "property damage" arising out of construction or demolition operations, within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, roadbeds, tunnel, underpass or crossing.

- K.** "Leased worker" means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm to perform duties related to the conduct of your business. "Leased worker" does not include a "temporary worker".
- L.** "Loss" means direct and accidental loss or damage. But for Garagekeepers Coverage only, "loss" also includes any resulting loss of use.
- M.** "Pollutants" means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.
- N.** "Products" includes:
1. The goods or products you made or sold in a garage business; and
  2. The providing of or failure to provide warnings or instructions.
- O.** "Property damage" means damage to or loss of use of tangible property.
- P.** "Suit" means a civil proceeding in which:
1. Damages because of "bodily injury" or "property damage"; or
  2. A "covered pollution cost or expense"; to which this insurance applies, are claimed.
- "Suit" includes:
- a. An arbitration proceeding in which such damages or "covered pollution costs or expenses" are claimed and to which the "insured" must submit or does submit with our consent; or
  - b. Any other alternative dispute resolution proceeding in which such damages or "covered pollution costs or expenses" are claimed and to which the insured submits with our consent.
- Q.** "Temporary worker" means a person who is furnished to you to substitute for a permanent "employee" on leave or to meet seasonal or short-term workload conditions.
- R.** "Trailer" includes semitrailer.
- S.** "Work you performed" includes:
1. Work that someone performed on your behalf; and
  2. The providing of or failure to provide warnings or instructions.

USDOT Number: \_\_\_\_\_ Date Received: \_\_\_\_\_

A Federal Agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2126-0008. Public reporting for this collection of information is estimated to be approximately 2 minutes per response, including the time for reviewing instructions, gathering the data needed, and completing and reviewing the collection of information. All responses to this collection of information are mandatory. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Information Collection Clearance Officer, Federal Motor Carrier Safety Administration, MC-RRA, Washington, D.C. 20590.



United States Department of Transportation  
Federal Motor Carrier Safety Administration

## Endorsement for Motor Carrier Policies of Insurance for Public Liability under Sections 29 and 30 of the Motor Carrier Act of 1980

# FORM MCS-90

Issued to \_\_\_\_\_ of \_\_\_\_\_  
(Motor Carrier name) (Motor Carrier state or province)

Dated at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

Amending Policy Number: \_\_\_\_\_ Effective Date: \_\_\_\_\_

Name of Insurance Company: \_\_\_\_\_

Countersigned by: \_\_\_\_\_  
(authorized company representative)

The policy to which this endorsement is attached provides primary or excess insurance, as indicated for the limits shown (check only one):

*This insurance is primary and the company shall not be liable for amounts in excess of \$ \_\_\_\_\_ for each accident.*

*This insurance is excess and the company shall not be liable for amounts in excess of \$ \_\_\_\_\_ for each accident in excess of the underlying limit of \$ \_\_\_\_\_ for each accident.*

Whenever required by the Federal Motor Carrier Safety Administration (FMCSA), the company agrees to furnish the FMCSA a duplicate of said policy and all its endorsements. The company also agrees, upon telephone request by an authorized representative of the FMCSA, to verify that the policy is in force as of a particular date. The telephone number to call is: \_\_\_\_\_.

Cancellation of this endorsement may be effected by the company or the insured by giving (1) thirty-five (35) days notice in writing to the other party (said 35 days notice to commence from the date the notice is mailed, proof of mailing shall be sufficient proof of notice), and (2) if the insured is subject to the FMCSA's registration requirements under [49 U.S.C. 13901](#), by providing thirty (30) days notice to the FMCSA (said 30 days notice to commence from the date the notice is received by the FMCSA at its office in Washington, DC).

(continued on next page)

## DEFINITIONS AS USED IN THIS ENDORSEMENT

**Accident** includes continuous or repeated exposure to conditions or which results in bodily injury, property damage, or environmental damage which the insured neither expected nor intended.

**Motor Vehicle** means a land vehicle, machine, truck, tractor, trailer, or semitrailer propelled or drawn by mechanical power and used on a highway for transporting property, or any combination thereof.

**Bodily Injury** means injury to the body, sickness, or disease to any person, including death resulting from any of these.

**Property Damage** means damage to or loss of use of tangible property.

**Environmental Restoration** means restitution for the loss, damage, or destruction of natural resources arising out of the accidental discharge, dispersal, release or escape into or upon the land, atmosphere, watercourse, or body of water, of any commodity transported by a motor carrier. This shall include the cost of removal and the cost of necessary measures taken to minimize or mitigate damage to human health, the natural environment, fish, shellfish, and wildlife.

**Public Liability** means liability for bodily injury, property damage, and environmental restoration.

The insurance policy to which this endorsement is attached provides automobile liability insurance and is amended to assure compliance by the insured, within the limits stated herein, as a motor carrier of property, with Sections 29 and 30 of the Motor Carrier Act of 1980 and the rules and regulations of the Federal Motor Carrier Safety Administration (FMCSA).

In consideration of the premium stated in the policy to which this endorsement is attached, the insurer (the company) agrees to pay, within the limits of liability described herein, any final judgment recovered against the insured for public liability resulting from negligence in the operation, maintenance or use of motor vehicles subject to the financial responsibility requirements of Sections 29 and 30 of the Motor Carrier Act of 1980 regardless of whether or not each motor vehicle is specifically described in the policy and whether or not such negligence occurs on any route or in any territory authorized to be served by the insured or elsewhere. Such insurance as is afforded, for public liability, does not apply to injury to or death of the insured's employees while engaged in the course of their employment, or property transported by the insured, designated as cargo. It is understood and agreed that no condition, provision, stipulation, or limitation contained in the policy, this endorsement, or any other endorsement thereon,

or violation thereof, shall relieve the company from liability or from the payment of any final judgment, within the limits of liability herein described, irrespective of the financial condition, insolvency or bankruptcy of the insured. However, all terms, conditions, and limitations in the policy to which the endorsement is attached shall remain in full force and effect as binding between the insured and the company. The insured agrees to reimburse the company for any payment made by the company on account of any accident, claim, or suit involving a breach of the terms of the policy, and for any payment that the company would not have been obligated to make under the provisions of the policy except for the agreement contained in this endorsement.

It is further understood and agreed that, upon failure of the company to pay any final judgment recovered against the insured as provided herein, the judgment creditor may maintain an action in any court of competent jurisdiction against the company to compel such payment.

The limits of the company's liability for the amounts prescribed in this endorsement apply separately to each accident and any payment under the policy because of anyone accident shall not operate to reduce the liability of the company for the payment of final judgments resulting from any other accident.

(continued on next page)

## SCHEDULE OF LIMITS — PUBLIC LIABILITY

Type of carriage	Commodity transported	January 1, 1985
(1) For-hire (in interstate or foreign commerce, with a gross vehicle weight rating of 10,001 or more pounds).	Property (nonhazardous)	\$750,000
(2) For-hire and Private (in interstate, foreign, or intrastate commerce, with a gross vehicle weight rating of 10,001 or more pounds).	Hazardous substances, as defined in <a href="#">49 CFR 171.8</a> , transported in cargo tanks, portable tanks, or hopper-type vehicles with capacities in excess of 3,500 water gallons; or in bulk Division 1.1, 1.2, and 1.3 materials, Division 2.3, Hazard Zone A, or Division 6.1, Packing Group I, Hazard Zone A material; in bulk Division 2.1 or 2.2; or highway route controlled quantities of a Class 7 material, as defined in <a href="#">49 CFR 173.403</a> .	\$5,000,000
(3) For-hire and Private (in interstate or foreign commerce, in any quantity; or in intrastate commerce, in bulk only; with a gross vehicle weight rating of 10,001 or more pounds).	Oil listed in <a href="#">49 CFR 172.101</a> ; hazardous waste, hazardous materials, and hazardous substances defined in <a href="#">49 CFR 171.8</a> and listed in <a href="#">49 CFR 172.101</a> , but not mentioned in (2) above or (4) below.	\$1,000,000
(4) For-hire and Private (In interstate or foreign commerce, with a gross vehicle weight rating of less than 10,001 pounds).	Any quantity of Division 1.1, 1.2, or 1.3 material; any quantity of a Division 2.3, Hazard Zone A, or Division 6.1, Packing Group I, Hazard Zone A material; or highway route controlled quantities of a Class 7 material as defined in <a href="#">49 CFR 173.403</a> .	\$5,000,000

\*The schedule of limits shown does not provide coverage. The limits shown in the schedule are for information purposes only.